



SOFTWARE LICENSE & GENERAL TERMS

This Software License & General Terms (the “**Agreement**”), dated as of the date listed on the Order Form (the “**Effective Date**”), is by and between MEMR, Inc., a Delaware corporation (“**meMR**”), and the customer as listed on the Order Form (“**Customer**”). meMR and Customer are referred to herein individually as “**Party**” and collectively as the “**Parties.**”

BACKGROUND

- meMR provides patient- and provider-facing technology that aggregates a patient’s medical records from multiple sources and uses machine learning to compile, index, and organize patient medical records into one manageable database.
- Customer is a healthcare provider whose patients may benefit from meMR’s services.
- The Parties desire to enter into an arrangement whereby meMR provides the Software (defined below) and Services (defined below) to Customer and Participating Patients (defined below).

AGREEMENT

The Parties hereby agree as follows:

1. **DEFINITIONS.** The following definitions will apply to capitalized terms used throughout this Agreement.
 - a. “**Authorized User**” means the employees, providers, consultants, agents, subcontractors, and licensed healthcare professionals of Customer that Customer authorizes to access the Software on its behalf.
 - b. “**Customer Data**” means (a) all data and information Customer submits or transmits to meMR, excluding any PHI (as defined below) and/or Patient-Generated Health Data necessary for the Services; and (b) data, records, and information meMR generates that relates directly to the Services for Customer under this Agreement, exclusive of information or documentation that meMR generates for use in meMR’s business generally or for use with multiple customers and exclusive of De-Identified Data as defined below.
 - c. “**Customer Support**” means the customer support provided by meMR Customer Success Managers (“CSM”) to assist customers with troubleshooting and questions regarding the use of the technology provided under this Agreement.
 - d. “**De-identified Data**” means personally identifiable information (PII) that has been stripped of certain identifiable elements in accordance with applicable law to render the individual’s data de-identified. Please note that the Parties address de-identified PHI in the Business Associate Agreement (“BAA”).
 - e. “**Intellectual Property Rights**” means any patent, invention, discovery, know-how, moral, technology, software, copyright, authorship, trade secret, trademark, trade dress, service mark, confidentiality, proprietary, privacy, intellectual property, or similar rights (including rights in applications, registrations, filings, and renewals) that are now or hereafter protected or legally enforceable under state and/or Federal common laws or statutory laws or laws of foreign jurisdictions.



- f. **“meMR Data”** means: (a) all data, software (in any form), and information meMR submits or transmits to Customer regarding meMR; (b) all data, records, and information generated in meMR’s business or operations, including any information relating to meMR’s subcontractors and/or affiliates; (c) all meMR Intellectual Property (defined below), together with all derivative works of the meMR Intellectual Property; (d) data, records or information occurring in any form, including written, graphic, electronic, visual or fixed in any tangible medium of expression and whether developed, generated, stored, possessed or used by meMR, Customer, or a third party if related to the items described in (a) through (c) above; and (e) any provider data generated by the Software (including but not limited to patient usage and diagnostic. meMR Data does not include any data or information that relates exclusively to Customer or Customer’s business, operations, or activities.
- g. **“Order Form”** means the meMR Order Form provided to Customer for purposes of ordering meMR services.
- h. **“Participating Patients”** means those patients of Customer’s practice that Customer has determined may benefit from meMR Services, that are enrolled in the Software, and that have agreed to the Terms of Use.
- i. **“Patient-Generated Health Data”** or **“PGHD”** means data collected from a Participating Patient and transmitted through the Software.
- j. **“Physician User”** means Customer-employed or contracted physicians that Customer authorizes to access the Software on its behalf, Software access is billed on a per Physician User basis and Authorized Users who are not Physician Users will access Software under the Physician subscription.
- k. **“Protected Health Information”** or **“PHI”** shall have the meaning ascribed to such term in 45 C.F.R. 160.103.
- l. **“Software”** means the Patient App, the Provider-Facing Dashboard, all of the capabilities and functionalities associated with the Patient App and Provider-Facing Dashboard including (i) proprietary cloud-based technology platforms, (ii) the Patient App and related software apps, analytics modules and/or portals, and Authorized User’s documentation, and (iii) maintenance hosting services, and/or ongoing user technical support services provided by meMR.
- m. **“Terms of Use”** or **“TOU”** means the agreement between meMR and each of Customer’s Authorized Users and Participating Patients who use the Software.

2. SOFTWARE.

- a. **Provider-Facing Dashboard**. The Provider-Facing Dashboard (**“Dashboard”**) is a web-based software platform that allows healthcare providers to view, track, and analyze their patients’ health data.
- b. **Patient Mobile Application**. The Patient Mobile Application (**“Patient App”**) is a web-based software application. The Patient App is intended to provide a convenient program for patients and/or their caregivers, as applicable, to compile, access, and share medical records in one convenient platform. The Patient App is not intended for continuous patient monitoring or in such a way that would allow immediate clinical action or healthcare decision-making.

3. SERVICES. meMR agrees to provide the associated services indicated on the Order Form (**“Services”**). By selecting a particular service, Customer agrees to the relevant terms associated with that service



set forth in the Services List and Additional Terms attached as **Exhibit A**. The Services List and Additional Terms attachment is incorporated into and made a part of this Agreement.

4. SOFTWARE ACCESS AND USE.

- a. **Software Access.** Subject to Customer's compliance with this Agreement, meMR will provide access to the Software to Customer and its Authorized Users. Customer and its Authorized Users may use the Software (a) to upload and/or transmit Customer Data by and through the Software; and (b) to access and use reports generated from time to time by meMR.
- b. **Use Restrictions.** Customer and its Authorized Users shall not: (i) decompile, reverse engineer or modify the Software or underlying source code, or otherwise attempt to obtain the source code for the Software; (ii) sublicense or allow any person other than Customer, its Authorized Users and Participating Patients to use the Software; (iii) use the name, trademark, trade name, trade dress, designs and logos of meMR ("**meMR Marks**") without meMR's prior written consent; (iv) use the Software or underlying source code in a manner that interferes with the use of the Software by meMR or its customers; or (v) make any claim of ownership or license to the meMR Marks or the Software in any way. A violation of this Section 4(b) shall be deemed to be a material breach of this Agreement and, in such event, meMR shall have the right, in addition to retaining all payments hereunder and pursuing all other remedies available at law or in equity, to refuse or terminate Customer's access to the Software and Services. The restrictions contained in this Section 4(b) shall expressly survive the termination or expiration of this Agreement.
- c. **White Label Branding.** All white labeled Software capabilities created pursuant to this Agreement shall be branded under the name of Customer and shall be accessible to the public under a URL designated by Customer. The name, trademark, trade name, trade dress, designs, and logos of meMR Marks shall not appear on the Customer URL unless mutually agreed by the Parties in advance in a separate signed written authorization. No license, express or implied, is granted to Customer for any of the meMR Marks under this Agreement.]

5. meMR RESPONSIBILITIES.

- a. **Implementation & Training Services.** meMR may provide implementation and training services for Customer and Customer's Authorized Users. Implementation services include integrating Participating Patients' information into the Software and developing a dedicated tracking system to allow Customer and its Authorized Users to monitor Participating Patients. Training services shall include virtual communication with Customer and their Authorized Users to educate them on use of the Software and related obligations and services.
- b. **Support Services.** meMR may provide technical and/or customer support services to Customer (including Participating Patients, physicians, and staff) via telephone and internet, and by internet 24 hours a day, seven days a week excluding Federal holidays ("**Support Hours**"). Customer may initiate a Customer Support ticket during Support Hours by contacting support@memrhealth.com. meMR will use commercially reasonable efforts to respond to all Customer Support tickets within one (1) business day, but meMR does not represent, warrant, or guarantee that all tickets will be responded to within such time frame.



6. CUSTOMER RESPONSIBILITIES.

- a. **Operations & Enrollment.** Customer is responsible for identifying Participating Patients and referring the Participating Patients through the portal for the appropriate Services. Customer is responsible for providing sufficient information to meMR to allow meMR to furnish the Services to Participating Patients, including the patient's name, contact information, and treatment information.
- b. **Determining the Care Plan.** Customer is responsible for determining a Participating Patient's care plan and referring the Participating Patient through the portal, as well as determining the appropriate regimen for Participating Patients to follow.
- c. **System.** Except as specifically outlined in this Agreement, Customer is responsible for (a) obtaining, deploying, and maintaining all hardware, software, and equipment necessary for Customer and its Authorized Users to access and use the Services; (b) contracting with third-party ISP, telecommunications and other service providers as necessary to access and use the Services; and (c) paying all third-party fees and access charges incurred in connection with the foregoing. meMR will not be responsible for supplying any hardware, software, or other equipment to Customer under this Agreement and cannot be held responsible for any interruption in the Services that occurs due to any of the foregoing or Customer's failure to maintain any of the foregoing.
- d. **Consents.** Unless otherwise agreed in writing, Customer is responsible for obtaining and maintaining all necessary consents and authorizations to enable meMR to use, upload, process, and store Customer Data and to provide the Services to Customer's Participating Patients, including without limitation consent to receive notifications regarding a Participating Patient's care from meMR on behalf of Customer. Customer represents and warrants that it will not furnish an individual's PHI to meMR if the individual objects. Customer acknowledges and accepts full responsibility and liability for all Customer Data and for PHI that the Customer furnishes to meMR.
- e. **TOU.** Customer is responsible for its actions and the actions of its Authorized Users while using the Software. As a condition to Customer's and its Authorized Users' use of the Software, Customer shall require its Authorized Users to review and accept the meMR TOU as updated by meMR from time to time, prior to accessing the Software. Customer shall abide by, and Customer shall ensure that its Authorized Users abide by, the TOU when using or accessing the Software.
- f. **BAA.** Customer must enter into a Business Associate Agreement ("**BAA**") with meMR. The terms of the BAA between the Parties are incorporated into and made a part of this Agreement
- g. **Complying with Requests.** Customer shall comply with all reasonable requests from meMR for information to ensure meMR can comply with its obligations under this Agreement. meMR shall not be responsible for any delay in Services or other negative impact resulting from Customer's failure to comply with this Section 6(h).



- h. **Claims Submission.** Customer is solely responsible for verifying patient benefit eligibility and submitting claims for reimbursement to third-party payors, as applicable. Customer acknowledges and agrees that meMR is not a professional billing service and cannot be responsible for Customer's failure to receive payment for the services it renders to patients using meMR's Services or for improper claims Customer submits to third-party payors in association with the Services.

7. PAYMENT TERMS.

- a. **Fees.** As compensation for the Services, Customer will pay meMR the Fees indicated on the Order Form. All amounts outlined in this Agreement are denominated and shall be paid in U.S. dollars and are independent of reimbursement that Customer may or may not receive from third-party payors.
- b. **Invoicing & Payment Method.** All payments will be automatically debited on a monthly basis by meMR by the Customer's Payment Method indicated in the Order Form. Customer can update or change their payment method by contacting the meMR care team at support@memrhealth.com.
- c. **Due Date.** Unless otherwise indicated on the Order Form and/or properly disputed, meMR will automatically debit the Customer's Payment Method on a recurring monthly basis.
 - i. **Disputed Payments.** If Customer wishes to dispute any fees or expenses, Customer must notify meMR in writing within ten (10) business days of receipt of payment specifying such fees or expenses (a "**Dispute Notice**"). The Dispute Notice must specify the amounts that are being disputed as well as the reason for such dispute. meMR and Customer agree to attempt to resolve such dispute through informal meetings and discussions in good faith between appropriate representatives of the Parties within forty-five (45) days of receipt of the Dispute Notice before resorting to any other dispute resolution procedure.
 - ii. **Overdue Payments.** Any undisputed amount not timely paid to meMR (an "**Overdue Payment**") may accrue, at meMR's discretion, late charges at the rate of the lesser of one and one-half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, from the date such payment was due until the date paid. If there are undisputed payments outstanding for more than sixty (60) days from the due date, meMR reserves the right to suspend Customer and Customer's Authorized Users' access to the Software until such amounts are paid in full. Customer will continue to be obligated to pay all Fees during any such suspension period.
- d. **Taxes.** All amounts payable to meMR under this Agreement are exclusive of all local, state, federal and foreign taxes, levies, or duties of any nature ("**Taxes**"), and all payments to meMR are payable in full without reduction for Taxes. Customer is responsible for payment of all Taxes, excluding taxes owed by meMR based on meMR's net income. If meMR is legally obligated to pay or collect Taxes for which Customer is responsible, the appropriate amount will be invoiced to and paid by Customer unless Customer provides meMR with a valid tax exemption certificate authorized by the appropriate taxing authority.

8. PROPRIETARY RIGHTS.



- a. **meMR Intellectual Property**. As between meMR and Customer, all right, title, and interest, including all Intellectual Property Rights, in the meMR Marks, Software, meMR Data, and any other meMR property or materials furnished or made available as part of the Services, and all modifications and enhancements of the same (“**meMR Intellectual Property**” or “**meMR IP**”), belong to and are retained solely by meMR or meMR’s licensors and providers, as applicable. Nothing in this Agreement is intended to or may be construed to transfer any such rights in any part of the Services to Customer other than as explicitly provided for in this Agreement. Customer shall not re-distribute the Software other than as specifically provided for in this Agreement.
- b. **Developments**. Except as otherwise explicitly set forth in this Agreement, all inventions, works of authorship, and developments conceived, created, written, or generated by or on behalf of meMR, whether solely or jointly, in connection with the Services (“**meMR Developments**”) and all Intellectual Property Rights in the same, shall be the sole and exclusive property of meMR. Customer agrees to execute any documents or take any actions as may reasonably be necessary, or as meMR may reasonably request, to perfect meMR’s ownership of the meMR Developments.
- c. **Trademarks**. Nothing in this Agreement shall grant either Party ownership interest, license, or other right to the other Party’s trade names, trademarks, or service marks, except as expressly provided in this Agreement.
- d. **Customer Data**. As between meMR and Customer, all right, title, and interest in the Customer Data belong to and are retained solely by Customer.
 - i. **meMR License**. Customer grants to meMR a limited, non-exclusive, royalty-free, worldwide license to (i) use, reproduce, aggregate, and modify the Customer Data and to perform all acts with respect to the Customer Data as may be necessary for meMR to provide the Services to Customer; (ii) use or modify the Customer Data to create De-identified Data; and (iii) use Customer’s name, logo, and trademark for marketing purposes upon written consent of Customer. meMR intends to use De-identified Data, aggregated with the de-identified data of other meMR customers, to enable meMR to provide more targeted, accurate, and useful insights to its customers.
 - ii. **Accuracy of Customer Data**. As between meMR and Customer, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer Data will be included in and treated as Customer’s Confidential Information under this Agreement.
- e. **Feedback License**. meMR owns all right, title, and interest in and to any suggestion, enhancement, request, recommendation, or other feedback related to the Software provided by Customer (any “**Feedback**”). Feedback is not Customer’s Confidential Information.
- f. **De-identified Data**. meMR may use, create, modify, aggregate, and disclose De-identified Data for any purposes not prohibited by law. meMR owns all rights, title, and interest, and all Intellectual Property Rights in such De-identified Data and any data, information, and material



created by meMR with such De-identified Data. De-identified Data is NOT Customer Data and for this Section 8(f) does not include deidentified PHI which is governed by the BAA. For the avoidance of doubt, the second and third sentences of this Section 8(f) shall survive the expiration or earlier termination of this Agreement.

9. CONFIDENTIALITY.

- a. **Confidential Information Defined.** “Confidential Information” means any and all non-public technical and non-technical information disclosed by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) in any form or medium, that the Disclosing Party identifies as confidential or that by the nature of the circumstances surrounding the disclosure and/or receipt ought to be treated as confidential and proprietary information. Confidential Information includes, without limitation, (a) techniques, inventions (whether or not patented or patentable), know-how, processes, algorithms, software programs, software source and object codes and documents, APIs, and other creative works (whether or not copyrighted or copyrightable); (b) financial information, customer lists, business forecasts, and marketing plans and information; (c) the business relationships and affairs of either Party and its clients, patients, and referral sources; (d) the internal policies and procedures of either Party; (e) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving Party in the course of Disclosing Party’s business; and (f) the terms of this Agreement. meMR’s Confidential Information further includes the Software and meMR Data. Confidential Information of Customer also includes Customer Data. Confidential Information also includes all summaries and abstracts of Confidential Information. In addition, Confidential Information excludes PHI, which must be protected according to the BAA.
 - i. **Exceptions.** Confidential Information shall not include any information which, as evidenced by Receiving Party’s records: (i) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source with no obligation of confidentiality to the Disclosing Party; (ii) was developed by the Receiving Party without use of the Disclosing Party’s Confidential Information, or (iii) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of this Agreement or any obligation of confidentiality by the Receiving Party.
- b. **Confidential Information Terms.** The Receiving Party will, at all times, both during the term and thereafter, keep in confidence and trust all of the Disclosing Party’s Confidential Information. The Receiving Party will not use the Disclosing Party’s Confidential Information other than as necessary to fulfill the Receiving Party’s obligations or to exercise the Receiving Party’s rights under this Agreement. Either Party may disclose the other Party’s Confidential Information upon the order of any competent court or government agency; provided that, prior to disclosure and to the extent possible, the receiving Party must (i) assert the confidential nature of the Confidential Information to the agency; (ii) immediately notify the Disclosing Party in writing of the order or request; and (iii) cooperate fully with the Disclosing Party in protecting against any such disclosure and/or narrowing the scope of the compelled disclosure. Each Party agrees to secure and protect the other Party’s Confidential Information with the same degree of care and in a manner consistent with the maintenance of such Party’s own Confidential Information (but in no event less than reasonable care). The Receiving Party will not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers,



employees, affiliates, and agents who need access to such Confidential Information in order to effect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations outlined in this Agreement.

- c. **Injunctive Relief.** The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damage.
- d. **HIPAA Compliance.** Each Party, to the extent applicable, will comply with laws and regulations applicable to the privacy and security of individually identifiable health information, including but not limited to state laws and regulations and the Health Insurance Portability and Accountability Act (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and/or regulations promulgated thereunder (“HIPAA Regulations”). The BAA further describes the Parties’ obligations with respect to compliance with HIPAA, HITECH, and HIPAA Regulations.
- e. **Security.** Each of Customer’s Authorized Users will create a unique user login and password to be used to access and use the Software. Customer will be, and will ensure that its Authorized Users are, responsible for maintaining the confidentiality of all Authorized User logins and passwords and for ensuring that each login and password is used only by the Authorized User to which it was issued. Customer is responsible for ensuring that its Authorized Users do not share passwords with each other or any third party. Customer agrees to immediately notify meMR of any unauthorized use of any account or login and password issued to an Authorized User, or any other breach of security known to Customer. meMR will have no liability for any loss or damage arising from Customer’s failure to comply with the terms outlined in this Section 9. Customer will ensure its Authorized Users do not circumvent or otherwise interfere with any user authentication or security of the Software.

10. TERMINATION.

- a. **Without Cause.** meMR may terminate this Agreement without cause upon thirty (30) days written notice to Customer.
- b. **Mutual Agreement.** This Agreement shall terminate upon the mutual written agreement of Customer and meMR as of the date of signature or other effective date set forth on the written instrument.
- c. **For Cause.**
 - i. **Material Breach.** Either Party may terminate this Agreement following a material breach of this Agreement by the other Party which is not cured during the Cure Period. The non-breaching Party shall notify the breaching Party of the breach in writing and the breaching party shall have fifteen (15) days (the “Cure Period”) to cure the breach following receipt of the notification. If the breaching Party fails to cure the breach within the Cure Period, then the non-breaching Party may terminate this Agreement upon written notice to the breaching party.



ii. **Other Cause.** Either Party, as designated below, may terminate this Agreement immediately by providing written notice to the other Party upon the occurrence of any of the following events:

1. meMR may terminate if meMR reasonably determines that Customer and/or its Authorized User(s) have been or are engaged in unlawful activity associated with the use of the Software and/or the Services;
2. meMR may terminate if the Customer or its principals, employees, or agents are indicted or convicted for any felony or misdemeanor involving moral turpitude;
3. Either Party may terminate if the other Party files a voluntary or involuntary petition in bankruptcy if such petition is not dismissed within thirty (30) days of such filing;
4. Either Party may terminate upon the appointment of a receiver or trustee to take possession of all, or substantially all, of the other Party's assets, if such appointment is not terminated within thirty (30) days; and/or
5. meMR reserves the right to terminate for any other reason meMR feels could reasonably jeopardize the integrity or reputation of its operations or systems.

d. **Effect of Termination.** Unless otherwise stated below, upon expiration or termination of this Agreement for any reason, (a) the License shall terminate and the Customer and the Customer's Authorized Users shall not use or access, directly or indirectly, the Software; (b) meMR's obligation to perform support services shall cease; and (c) all fees and other amounts owed to meMR accrued prior to expiration or termination will be immediately due and payable. Further, if Customer has made any copies of any meMR property or materials furnished or made available under this Agreement, Customer shall, within thirty (30) days of the effective date of the expiration or termination, either destroy or return to meMR all such copies along with a certificate signed by Customer that all such copies have been either destroyed or returned, respectively, and that no copy or any part of the Software, data, or other materials has been retained by Customer in any form.

i. **Return of Customer Data.** Within thirty (30) days after the effective date of applicable termination or expiration, meMR will make any Customer Data stored on the Software available upon written request to Customer.

11. REPRESENTATIONS & WARRANTIES.

a. **Mutual Representations and Warranties.** Each Party represents, warrants, and covenants that: (a) to its knowledge, it has the full power and authority to enter into this Agreement and to perform its obligations under this Agreement, without the need for any consents, approvals, or immunities not yet obtained; (b) its acceptance of and performance under this Agreement will not breach any oral or written agreement with any third party or any obligation it owes to any third party; and (c) it will comply with any and all applicable local, state, and/or national laws or regulations applicable to such Party, including, without limitation, those related to PHI, Covered Entities, and Business Associates as each term is defined under HIPAA, and to any other laws or regulations regarding data privacy and transmission of personal data.



- b. **Practice of Medicine.** CUSTOMER HEREBY AGREES AND ACKNOWLEDGES THAT MEMR IS IN NO WAY ACTING AS A MEDICAL PROVIDER, NOR IS MEMR PROVIDING 24/7 CONTINUOUS, SYNCHRONOUS, OR EMERGENCY MONITORING OR ALERTING. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION, PROCESSES, PRODUCTS, AND OTHER ITEMS REFERENCED BY MEMR OR ITS SOFTWARE ARE NOT INTENDED AS A RECOMMENDATION OR ENDORSEMENT OF THAT INFORMATION, PROCESS, PRODUCT, OR OTHER ITEM AND THAT THE ULTIMATE RESPONSIBILITY FOR DIAGNOSING AND TREATING ANY PATIENT RESTS WITH CUSTOMER AND/OR ITS HEALTHCARE PROVIDER(S) TREATING SUCH PATIENT. FURTHER, THE MEMR SERVICES CAN NOT AND ARE NOT DESIGNED, INTENDED, OR APPROPRIATE TO REPLACE THE RELATIONSHIP BETWEEN HEALTHCARE PROFESSIONALS AND USER OR TO ADDRESS SERIOUS, EMERGENCY, OR LIFE-THREATENING MEDICAL CONDITIONS AND SHOULD NOT BE USED IN THOSE CIRCUMSTANCES. MEMR IS NOT LIABLE TO ANY USER OR PERSON FOR ANY HARM CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF ANY HEALTHCARE PROFESSIONALS OR CLINICIANS/CAREGIVERS, WHETHER OR NOT RELYING UPON INFORMATION COLLECTED, GENERATED, OR STORED VIA THE MEMR SERVICES.
- c. **Third-Party Materials.** CUSTOMER UNDERSTANDS AND AGREES THAT USING, ACCESSING, DOWNLOADING, OR OTHERWISE OBTAINING INFORMATION, MATERIALS, OR DATA THROUGH THE SOFTWARE FROM A SOURCE OTHER THAN MEMR ("**Third-Party Materials**") IS AT ITS OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS OR ITS AUTHORIZED USERS' PROPERTY OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.
- d. **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES OUTLINED IN THIS SECTION 11, **THE SERVICES, SUPPORT, DOCUMENTATION, AND ANY OTHER SERVICES, DATA, AND CONTENT (INCLUDING OF THIRD-PARTY SERVICES AND ANY AND ALL THIRD-PARTY ITEMS, PRODUCTS, DEVICES, AND/ OR MATERIALS) ARE PROVIDED ON AN AS-IS BASIS. CUSTOMER'S USE OF THE SOFTWARE AND PURCHASE OF THE SERVICES ARE AT THEIR OWN RISK. MEMR DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY, AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.** ANY WARRANTIES MADE BY MEMR ARE FOR THE BENEFIT OF CUSTOMER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY. THE SOFTWARE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, SUCH AS DELAYS CAUSED BY THIRD-PARTY NETWORK PROVIDERS, THAT ARE OUTSIDE MEMR'S CONTROL. MEMR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY INFORMATION, DATA, PRODUCTS, PROCESSES, AND OTHER MATTERS REFERENCED BY THE SERVICES REMAINS WITH THE CUSTOMER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, MEMR DOES NOT GUARANTEE CONTINUOUS, ERROR-FREE, VIRUS-FREE, OR SECURE OPERATION AND ACCESS TO THE SOFTWARE.



- e. **Basis of the Bargain.** CUSTOMER ACKNOWLEDGES AND AGREES THAT MEMR HAS OFFERED ITS SERVICES AND ENTERED INTO THIS AGREEMENT TO WHICH IT IS A PARTY IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN CUSTOMER AND MEMR, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN CUSTOMER AND MEMR. CUSTOMER ACKNOWLEDGES AND AGREES THAT MEMR WOULD NOT BE ABLE TO PROVIDE THE SERVICES TO CUSTOMER ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

12. INSURANCE AND INDEMNIFICATION.

- a. **Insurance.** During the Term, Customer and meMR shall each maintain, at its own expense maintain commercially reasonable insurance coverage in accordance with applicable industry standards and state and federal laws, rules, and regulations. Including **Commercial General Liability** insurance with limits of Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in aggregate.
- b. **Indemnification by Customer.** Customer shall indemnify and hold harmless meMR and its officers, directors, employees and agents ("**meMR Indemnified Parties**"), from and against any and all damages, liabilities, penalties, interest, fines, losses, costs and expenses (including reasonable attorneys' fees and expenses) ("**Losses**"), arising, directly or indirectly, out of or relating to any claim, action or proceeding (a "**Claim**") brought by a third party based on (i) the improper use or operation of the Services (and any third-party software provided to Customer pursuant to this Agreement) by Participating Patients, Customer and/or Authorized Users, including, without limitation, any non-authorized use of Customer's user logins, except to the extent that any such Loss was due to the gross negligence or willful misconduct of meMR; (ii) a breach of the Agreement and/or the TOU by Customer or any of its Authorized Users, (iii) the accuracy, quality, integrity, legality, reliability or appropriateness of Customer Data or any other content or data introduced to any part of the Services by any Authorized User; (iv) violation of any applicable law, rule or regulation by Customer or any of the Authorized Users, (v) the diagnosis and/or treatment of any of Customer's patients; and/or (vi) the negligent acts or willful misconduct of Customer or its personnel. Customer will pay all Losses (whether by settlement or award of by a final judicial judgment) incurred by the meMR Indemnified Parties from any such Claim.
- c. **Indemnification by meMR.** Subject to limitations of liability outlined in this Agreement, meMR agrees to defend Customer and its officers, directors, employees, and agents (a "**Customer Indemnified Party**") from and against any Losses resulting from or arising out of a successful claim that the Software infringes or misappropriates the patent, trade secret, trademark, copyright or other Intellectual Property Rights of any third party (an "**Infringement Claim**"). meMR will pay all Losses (whether by settlement or award of by a final judicial judgment) incurred by the Customer Indemnified Parties from any such Claim. In the event of an Infringement Claim, meMR may, at its election, and sole expense, (i) modify the Software so that such Software is non-infringing and functionally equivalent; or (ii) obtain the right for Customer and Customer's patients to continue using the Software at no additional cost to Customer. If none of the foregoing is commercially practicable, meMR may immediately



terminate this Agreement upon reasonable notice to Customer. ***Customer acknowledges and agrees that the remedies outlined in this paragraph 12(c) constitute Customer's only available remedies and meMR's only obligation with respect to an Infringement Claim.***

- d. **Procedure.** Each Party shall provide to the other Party prompt notice of any Claim for which they are seeking indemnification. The indemnified Party may have counsel reasonably acceptable to the indemnifying Party observe the proceedings at the indemnified Party's expense, provided the indemnifying Party retains sole control of the defense of the Claim. The indemnified Party has the right to approve any settlement that affirmatively places on the indemnified Party an obligation that has a material adverse effect on the indemnified Party other than requiring the indemnified Party to cease using all or a portion of the Services or to pay sums eligible for indemnification under this Agreement. Such approval shall not be unreasonably withheld.

13. LIMITATIONS OF LIABILITY.

- a. **No Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE, OR LOST BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES ARISING OUT OF MEMR'S PROVISION OR CUSTOMER'S USE OF THE SOFTWARE OR THE RESULTS THEREOF, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL MEMR BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.
- b. **Limits on Liability.** IN NO CASE WILL EITHER PARTY BE LIABLE FOR ANY AGGREGATE AMOUNT GREATER THAN THE AMOUNTS PAID AND PAYABLE BY CUSTOMER TO MEMR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.
- c. **Essential Purpose.** CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 13 (LIMITATION OF LIABILITY) ARE A BARGAINED FOR REASONABLE ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND (B) EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.
- d. **Exceptions.** The limitations and exclusions of certain damages outlined in Sections 13(a) and 13(b) will not apply to injury or damage caused by a Party's gross negligence or willful misconduct.
- e. **Limitation of Action.** No action (regardless of form) arising out of this Agreement may be commenced by Customer against meMR more than two (2) years after the cause of action arose.

14. MISCELLANEOUS.



- a. **Subcontractors.** meMR may use its affiliates or subcontractors to perform its obligations under this Agreement.
- b. **Notice.** Any notices, requests, consents, demands, or other communications required or permitted under this Agreement will be in writing and deemed to have been duly given either: (a) when delivered, if delivered by hand, sent by United States registered or certified mail (return receipt requested), delivered personally by commercial courier, or sent by email; or (b) on the second following business day, if sent by United States Express Mail or a nationally recognized commercial overnight courier; and in each case to the Parties at the following addresses (or at other addresses as specified by a notice) with applicable postage or delivery charges prepaid. Notices to meMR shall be sent to the following address: ATTN: meMR Inc., 510 E. 14th Street, 503, New York, NY 10009. Notices to Customer shall be sent to the address specified in the Order Form.
- c. **Amendment.** Except as may otherwise be specified in this Agreement, this Agreement may be modified, changed, or amended only by a written amendment mutually agreed to and signed by both Parties.
- d. **Waiver; Severability.** A Party's right to enforce a provision of this Agreement may only be waived in writing and signed by the Party against which the waiver is to be enforced. Failure to enforce any provision of this Agreement in any one instance will not be construed as a waiver of future performance of that provision, and the Party's obligations under that provision will continue in full force and effect. The provisions of this Agreement are severable. The invalidity or unenforceability of any term or provision in any jurisdiction will be construed and enforced as if it has been narrowly drawn so as not to be invalid, illegal, or unenforceable to the extent possible and will in no way affect the validity or enforceability of any other terms or provisions in that jurisdiction or of this entire Agreement in that jurisdiction.
- e. **Governing Law & Venue.** This Agreement, any additional applicable Terms & Conditions, and each Party's rights and obligations under each will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to conflicts of law principles. Each Party hereby submits to the jurisdiction of any court in the State of New York.
- f. **Assignment.** Neither Party may assign or transfer this Agreement or any additional applicable terms and conditions without the prior written consent of the other Party; provided, however, that meMR may assign or transfer this Agreement without Customer's consent to any of meMR's affiliates, subsidiaries, entities controlled by or under common control with meMR, or in the event of a merger, change of control or sale of substantially all of its assets. This Agreement will bind the Parties and their respective successors and permitted assigns and will inure to the benefit of the Parties and their respective permitted successors and assigns.
- g. **Force Majeure.** If any Party is unable to perform any of its obligations under this Agreement (with the exception of payment obligations) because of any cause beyond the reasonable control of and not the fault of the Party invoking this Section 14(g), including any act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic or pandemic, destruction of production facilities, riot, insurrection or material unavailability, and if the non-performing Party has been unable to avoid or overcome its effects through the exercise of commercially reasonable efforts, such non-performing Party will give prompt notice to the other Party, its



performance will be excused, and the time for its performance will be extended for the period of delay or inability to perform due to such occurrences. If performance is extended under this Section 14(g) for more than sixty (60) days, then at any time before reinstatement of the performance, the other Party may terminate this Agreement upon notice to the non-performing Party.

- h. **Relationship of the Parties.** The sole relationship between the Parties is solely that of independent contractors. This Agreement will not create a joint venture, partnership, agency, employment, or other relationship between the Parties.
- i. **Survival.** Any term of this Agreement that contemplates performance after termination of this Agreement will survive expiration or termination and continue until fully satisfied.
- j. **Dispute Resolution.** In case of disputes in connection with the negotiation, execution, interpretation, performance, or non-performance of this Agreement, the Parties agree to seek non-binding mediation, which shall be conducted remotely by a single mediator selected by the Parties. If the Parties fail to agree on the mediator within thirty (30) days of the date one of them invokes this provision, either Party may apply to the American Arbitration Association to make the appointment. The mediator shall conduct the proceedings pursuant to the rules of the American Arbitration Association, as they exist at the time of the dispute. In the event that any such mediation does not produce a settlement, unless the dispute is otherwise settled, the dispute shall be determined by binding and final arbitration in New York, NY, by three (3) arbitrators selected by the Parties (or by the American Arbitration Association if the Parties cannot agree) in accordance with the law of Delaware and the rules of the American Arbitration Association.
- k. **Entire Agreement.** This Agreement, including all applicable Attachments, constitutes the entire agreement between the Parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.
- l. **Counterparts.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.