



Subscription Services Agreement

This Subscription Services Agreement (the "Agreement") is entered into and effective as of the Effective Date below and made by and between hc1 Insights, Inc., located at 6100 Technology Center Drive, Building K, Indianapolis, IN 46278 ("hc1 Insights") and _____, located at _____ ("Customer"). Capitalized terms not defined elsewhere in this Agreement shall have the meaning given to them in the Terms of Service ("Exhibit D") or the Support and Service Level Agreement ("Exhibit E").

hc1 Insights and Customer hereby agree as follows:

1. Subscription Service. Subject to the terms and conditions of this Agreement and any applicable Order Form(s), and during the Term, hc1 Insights hereby grants to Customer a non-exclusive, terminable, non-transferable right and license to access and use the Services pursuant to the Agreement, in and under hc1 Insights' intellectual property rights, solely for Customer and its Affiliates' internal business operations and for no other use or purpose. hc1 Insights shall provide standard Customer Care support for the Service at no additional charge, or provide upgraded Customer Care support if purchased, as set forth in an Order Form(s). The terms of this Agreement shall also apply to updates and upgrades subsequently provided by hc1 Insights to Customer for the Service. hc1 Insights shall host the Service and may update the functionality and user interface of the Service from time to time in its sole discretion and in accordance with this Agreement, the Terms of Service or the Support and Service Level Agreement as part of its ongoing mission to improve the Service and Customer's use of the Service.

Unless otherwise provided in the applicable Order Form, the Service is purchased as subscriptions under the foregoing license. Subscriptions may be added during the Term at the same pricing as the underlying subscription pricing, prorated for the portion of the Term remaining at the time the subscriptions are added. Any added subscriptions will terminate on the same date as the underlying subscriptions.

Subscriptions are subject to usage limits based on the quantities specified in the Order Form(s). Customer and its Affiliates shall not use or otherwise access the Services in a manner that exceeds Customer's and/or Affiliates' authorized use and usage limits as set forth in the applicable Order Form(s).

2. Order Forms. The Service shall be ordered by Customer or its Affiliate(s) pursuant to Order Forms. Each Order Form is attached hereto as Exhibit A and shall include, at a minimum, a listing of the Service and Professional Services, as set forth in Exhibit B, being ordered and the fees therefor. Except as otherwise provided on the Order Form, each Order Form is only valid and binding on the parties when executed by both parties and shall be subject to, governed by, and incorporates by reference the terms and conditions of this Agreement, the Terms of Service, and the Support and Service Level Agreement. For any order by Customer or its Affiliate(s) for the benefit of Customer's Affiliate(s), the term "Customer" shall refer to Customer and such Affiliate(s).

3. Term, Fees, Payment & Taxes.

3.1 Term of Agreement. Unless otherwise specified on the Order Form or earlier terminated pursuant to Section 4 hereof, the term of this Agreement shall be for thirty-six (36) months commencing on the Effective Date (the "Initial Term"). Thereafter, the Term shall be extended as set forth in subsequent Order Forms (each successive renewal term, a "Renewal Term" and collectively, the "Term"). If Customer and hc1 Insights have not approved an Order Form regarding the upcoming Renewal Term prior to the expiration of the then-current Term, the Term shall be automatically extended for successive Renewal Terms of thirty-six (36) months each, unless either party provides written notice of non-renewal to the other at least ninety (90) days before such expiration.

3.2 Fees and Payment. Customer shall pay hc1 Insights the fees for the Service ("Subscription Fees"), as specified in each Order Form. All payments shall be made in United States Dollars (USD). If Customer requests (and hc1 Insights agrees) for hc1 Insights to accept payments denominated in a foreign currency, a minimum surcharge of 5% will apply to each invoice. hc1 Insights reserves the right to change the Subscription Fees, Professional Services Fees, and other charges included in an Order Form at any time during the Term of this Agreement by amending the Order Form upon thirty (30) days' prior written notice to Customer, by email or otherwise. Purchase of additional subscriptions of the Service, or purchase of additional Users during a



Term, will co-terminate with and be prorated through the end of the then-current Term. Subscription Fees on all subsequent Order Forms and for all Renewal Terms shall be set at then-current hc1 Insights pricing. Unless otherwise specified in an Order Form, the Subscription Fees shall accrue and will be invoiced and due annually in advance.

3.3 Taxes. Subscription Fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sale, use or withholding taxes ("Taxes"). Customer is responsible for paying all Taxes, excluding only taxes based on hc1 Insights' net income. If hc1 Insights has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides hc1 Insights with a valid tax exemption certificate authorized by the appropriate taxing authority.

3.4 Late Payments. Late payments shall be subject to a service charge equal to 1.5% of the amount due (calculated on a monthly basis) or the maximum amount allowed by law, whichever is less.

4. Termination. Either party may immediately terminate this Agreement and all Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement or the Terms of Service, which breach is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail to provide the allegedly breaching party a meaningful opportunity to cure such alleged breach. Upon termination or expiration of this Agreement for any reason, Customer and/or its Affiliate(s) shall have no rights to continue use of the Service. If this Agreement is terminated by Customer for any reason other than a material breach by hc1 Insights, Customer agrees that hc1 Insights shall be entitled to all of the fees including, without limitation, the Subscription Fees, due under this Agreement for the then-current Term. If this Agreement is terminated as a result of a breach on hc1 Insights' part, hc1 Insights shall refund the pro-rata portion of any Subscription Fees paid by Customer to hc1 Insights under this Agreement for the terminated portion of the Term.

5. Professional Services and Ownership of Deliverables. Subject to the terms and conditions of the Agreement and during the Term, Customer may contract with hc1 Insights for Professional Services as outlined in a statement(s) of work (each, a "Statement of Work" or "SOW"). hc1 Insights and Customer shall, from time to time, execute SOWs that specify the Professional Services to be provided to Customer hereunder. Unless otherwise specified in a SOW, fees for Professional Services ("Professional Services Fees") and related expenses shall be invoiced by hc1 Insights as incurred and shall be due upon receipt. Customer will cooperate with and assist hc1 Insights in performing the Professional Services. Customer's failure to do so will relieve hc1 Insights of responsibility for any related deficiencies in its performance.

As a part of the Professional Services, and during the Professional Services engagement, hc1 Insights may provide a test environment to Customer. The test environment will be disabled at the conclusion of the Professional Services engagement unless Customer contracts with hc1 Insights for access to a test environment following the conclusion of the Professional Services engagement. The terms of the test environment and associated Subscription Fees will be outlined in an Order Form or SOW signed by Customer and hc1 Insights. Customer acknowledges that any test environment may include beta source code and/or configurations and is provided "AS IS."

5.1 Change Control. In the event Customer or hc1 Insights request a change in any of the specifications, requirements, Deliverables, or scope of the Professional Services described in a SOW, the party seeking the change shall propose the applicable changes by written notice. Within two (2) Business Days of receipt of the written notice, each party's project leads shall meet, either in person or via telephone conference, to discuss and agree upon the proposed changes. hc1 Insights will prepare a change order describing the proposed changes to the SOW and the applicable change in fees and expenses if any (each, a "Change Order"). Executed Change Orders shall be deemed part of, and subject to, this Agreement.

6. Warranties.

6.1 Excluded Provider Warranty. Each party represents and warrants that it is not now and at no time has been excluded from participation in any federally funded health care program, including Medicare and Medicaid. Each party shall immediately notify the other of any actual exclusion from any federally funded health care program, including Medicare and Medicaid. Each party further represents and warrants that, to its knowledge, none of its employees are now excluded from participation in any federally funded health care program, including Medicare and Medicaid. In the event that either party is excluded from participation in any federally funded health care program during the Term of this Agreement, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate.



7. Business Associate Agreement. The parties shall comply with the terms and conditions of the Business Associate Agreement (“BAA”) attached hereto as Exhibit C. The parties shall further negotiate in good faith any amendments to the BAA to the extent necessary to comply with any changes to applicable laws and regulations.

8. Screening for Viruses and Malicious Code. hc1 Insights will use commercially reasonable measures, including generally accepted virus screening software, to protect the Service and its systems or software used, from viruses and other malicious code. In the event any viruses and other malicious code are discovered, they will be corrected pursuant to the provisions of this Agreement relating to support.

9. Disclaimer of Warranties. HC1 INSIGHTS DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE OR TRANSMISSION OF CUSTOMER DATA TO/FROM THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. FURTHERMORE, HC1 INSIGHTS DOES NOT REPRESENT THE ACCURACY OF THE INFORMATION OR DATA IN THE SERVICE, OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, THE AMAZON CLOUD, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY HC1 INSIGHTS. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

EXCEPT AS OTHERWISE STATED HEREIN, THE SERVICE, PROFESSIONAL SERVICES, AND DELIVERABLES PROVIDED TO CUSTOMER ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE AND/OR DELIVERABLE(S) OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES. THE WARRANTIES STATED IN SECTION 6.1 ABOVE ARE THE SOLE REMEDIES FOR CUSTOMER, AND EXCLUSIVE OBLIGATIONS OF HC1 INSIGHTS RELATED TO THE PROFESSIONAL SERVICES AND DELIVERABLES TO BE PERFORMED FOR AND DELIVERED TO CUSTOMER PURSUANT TO THIS AGREEMENT AND ANY SOW.

10. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE BAA (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SHALL IN NO EVENT EXCEED THE DIRECT DAMAGE LIMITATIONS AS SET FORTH IN THIS SECTION 10 BELOW.

Except with regard to amounts due under this Agreement, liability arising out of or in connection with the Service, any Professional Services or Deliverables, liability resulting from gross negligence or willful misconduct, or claims subject to indemnification as set forth in Section 11 hereof, the maximum liability one party may have to the other party whatsoever arising out of or in the connection with any license, use or other employment of the Service, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, tort, or otherwise, shall in no case exceed Three Million Dollars (\$3,000,000). The maximum liability of hc1 Insights to any person, firm or corporation whatsoever arising out of or in connection with any Professional Services or Deliverables shall be the amount paid by Customer for the Professional Services giving rise to the liability. The parties acknowledge that the limitations set forth in this Section 10 are integral to the amount of fees charged in connection with making the Service available to Customer and/or providing Professional Services and that, were hc1 Insights to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

11. Indemnification.

11.1 Infringement. hc1 Insights shall, at its own expense and subject to the limitations set forth in this Section, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Service, as used in accordance with this Agreement, infringes third party copyrights, trade secrets or trademarks and shall indemnify and hold Customer harmless from and against liability, damages and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such a Claim. If a Claim of infringement is brought or threatened, hc1 Insights shall, at its sole option and expense, use



commercially reasonable efforts either (a) to procure a license that will protect Customer against such Claim without cost to Customer, (b) to modify or replace all or portions of the Service as needed to avoid the alleged infringement, such update or replacement having substantially similar or better capabilities, or (c) if (a) and (b) are not commercially feasible, terminate this Agreement and refund to Customer a pro-rata refund of the Subscription Fees paid for under the Agreement for the terminated portion of the Term. The rights and remedies granted to Customer under this Section 11.1 state hc1 Insights' entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

11.2 Customer's Indemnity. Customer shall, at its own expense and subject to the limitations set forth in this Section, defend hc1 Insights from and against any and all Claims (a) alleging that the Customer Data or any trademarks or service marks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party, or (b) arising out of Customer's breach of Sections 1.4 (Customer's Lawful Conduct), 1.8 (Confidentiality) or 1.11 (Restrictions) of the Terms of Service, and shall indemnify and hold hc1 Insights harmless from and against liability for any Losses to the extent based upon such Claims.

11.3 Indemnification Procedures and Survival. In the event of a potential indemnity obligation under this Section, the indemnified party shall (a) promptly notify the indemnifying party in writing of such Claim, (b) allow the indemnifying party to have sole control of its defense and settlement (provided that the indemnifying party shall make no admission of fault or wrongdoing or other statement reflecting negatively on the indemnified party without the indemnified party's prior express written consent), and (c) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section are expressly conditioned upon the indemnified party's compliance with this Section 11.3 except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this Section, but such Claim shall be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section shall survive termination of this Agreement for one (1) year.

12. General Provisions.

12.1 Assignment. Neither party may assign this Agreement without written consent of the other; provided, however, that hc1 Insights may assign this Agreement and delegate its obligations hereunder to any of its affiliates, or to a successor, by way of merger or consolidation or the acquisition of substantially all of the business and/or assets relating to the subject matter of this Agreement, without Customer's prior written consent.

12.2 Governing Law; Jurisdiction; Venue. This Agreement shall be governed in accordance with the laws of the State of Indiana and any controlling U.S. federal law and excluding the Uniform Computer Information Transactions Act (UCITA) and the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement (or the Service) shall be subject to the exclusive jurisdiction of the state and federal courts located in the Southern District of Indiana, Indianapolis Division.

12.3 Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action. In the event of any litigation or any controversy or dispute arising out of or in connection with this Agreement, its interpretations, its performance or the like, the prevailing party shall be awarded reasonable attorneys' fees and/or costs. If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

12.4 Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer when signing the Order Form or SOW. All other notices to Customer will be addressed to the relevant Service system administrator designated by Customer.

12.5 Amendments; Waivers. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business



form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

12.6 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement. This Agreement does not create any joint venture, partnership, agency, or employment relationship between the parties, although hc1 Insights reserves the right to name Customer as a User of the Service.

12.7 Force Majeure. Neither party shall be liable for any loss or delay (including failure to meet the service level commitments) resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage (other than those involving hc1 Insights employees), Internet service provider failures or delays, civil unrest, war or military hostilities or criminal acts of third parties (collectively, a "Force Majeure Event"), and any payment date or delivery of Service date shall be extended to the extent of any delay resulting from any Force Majeure Event.

12.8 Non-Solicitation/Non-Hire. During the Term, Customer will not directly or indirectly solicit, employ or engage the services of any of the employees and/or contractors of hc1 Insights who were involved in providing Professional Services under or relating to this Agreement without prior written permission of hc1 Insights.

12.9 Entire Agreement. This Agreement, including all exhibits, addendums, Order Form(s), and/or SOW(s) shall constitute the entire understanding between Customer and hc1 Insights and is intended to be the final and entire expression of their agreement. The parties expressly disclaim any reliance on any and all prior discussions, emails, Requests for Proposals and/or agreements between the parties. Other than the attachments hereto, there are no other verbal agreements, representations, warranties undertakings or other agreements between the parties. Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer in connection to this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify this Agreement, regardless of any failure of hc1 Insights to object to such terms, provisions or conditions.

This Agreement shall not be modified or amended, except as expressly set forth herein or in the Terms of Service, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, or by a properly executed Order Form. Notwithstanding the above, after execution of this Agreement, and during the electronic provisioning of Customer's account, Customer may be presented with the requirement to "agree" to a click-through agreement pertaining to terms of service before Customer's account can be successfully provisioned. Customer acknowledges that other click-through terms and agreements found at <https://www.hc1/> or other similar URL shall apply in the event that such optional services are subsequently ordered or activated by Customer (i.e., hc1 Insights Third Party Application Terms).

Sections 3.2, 3.3, 3.4, 6, 9, 10, 11, Subsection 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, and 12.9 of this Agreement and Sections 1.5, 1.6, 1.8, 1.9, 1.10, 2.3, and 6 of the Terms of Service shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement as of the Effective Date.

hc1 Insights, Inc. _____

"Customer"

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Effective Date: _____ **20** _____



Exhibit A - Order Form

The Order Form(s) will be attached following this page. The Order Form(s) contains applicable items purchased or subscribed for, and any fees and related details. Each Order Form is hereby subject to the terms of this Agreement.



Exhibit B - Professional Services Statement of Work

The Statement(s) of Work will be attached following this page. The Statement(s) of Work contains applicable items Professional Services, fees, and related details. Each Statement of Work is hereby subject to the terms of this Agreement.



Exhibit C – Business Associate Agreement

This Business Associate Agreement (“BAA”) is made by and between hc1 Insights, Inc. (“Business Associate”) and ___ (“Covered Entity”) and effective as of the Effective Date of the Agreement.

1. Definitions. For purposes of this BAA and the Agreement, the following terms shall have the designated meanings. All other terms shall have the same meanings as in HIPAA or HITECH.

(a) “Administrative Safeguards” shall mean administrative actions, policies, and procedures to manage the selection, development, implementation, and maintenance of security measures to protect Electronic PHI and to manage the conduct of the Business Associate’s workforce in relation to the protection of that information.

(b) “Breach” shall mean the unauthorized acquisition, access, use, or disclosure of unsecured PHI which compromises the security or privacy of such information, but excludes:

(i) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Standards;

(ii) Any inadvertent disclosure by a person who is authorized to access PHI at Covered Entity or Business Associate to another person authorized to access PHI at Covered Entity or Business Associate and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Standards; and

(iii) A disclosure of PHI where Covered Entity or Business Associate 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.

(c) “Designated Record Set” shall mean a group of records maintained by or for Business Associate or the Covered Entity that is (a) the medical records and billing records about individuals maintained by or for Business Associate or the Covered Entity, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (c) used, in whole or in part, by or for Business Associate to make decisions about individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Business Associate or the Covered Entity.

(d) “Electronic PHI” shall mean PHI that is transmitted or maintained in electronic media.

(e) “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, and any amendments thereto.

(f) “HITECH” shall mean the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act, and any amendments, regulations, rules, and guidance issued thereto and the relevant dates for compliance.

(g) “Individually Identifiable Health Information” shall mean information that is a subset of health information, including demographic information collected from an individual, and

(i) is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

(ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and (1) identified the individual, or (2) there is a reasonable basis to believe the information can be used to identify the individual.

(h) “Physical Safeguards” shall mean physical measures, policies, and procedures to protect Business Associate’s electronic information systems and related buildings and equipment from natural environmental hazards and unauthorized intrusion.



(i) **“Privacy Standards”** shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

(j) **“Protected Health Information”** or **“PHI”** shall mean: (a) Individually Identifiable Health Information that is transmitted by electronic media; (b) maintained in any medium constituting electronic media; or (c) transmitted or maintained in any other form or medium. “PHI” shall not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, or records described in 20U.S.C. § 1232g(a)(4)(B)(iv).

(k) **“Secretary”** shall mean the Secretary of the United States Department of Health and Human Services.

(l) **“Security Incident”** shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.

(m) **“Security Standards”** shall mean the regulations with regard to security standards for health information, 45 C.F.R. Parts 160 and 164.

(n) **“Technical Safeguards”** shall mean the Standards for Electronic Transactions, 45 C.F.R. 160 and 162.

(o) **“Transaction Standards”** shall mean the Standards for Electronic Transactions, 45 C.F.R.

(p) **“Unsecured PHI”** shall mean PHI not secured through the use of a technology or methodology specified in guidance by the Secretary that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals.

2. Compliance with Applicable Law. The parties acknowledge and agree that, beginning with the relevant effective dates, Business Associate shall comply with its obligations under this BAA and with all obligations of a business associate under HIPAA, HITECH and the implementing regulations thereunder, as they exist at the time this BAA is executed and as they are amended, for so long as this BAA is in place.

3. Uses and Disclosures of PHI. Business Associate shall not use or disclose PHI received from the Covered Entity in any manner that is not permitted or required by the Agreement, this BAA or required by law. Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may create de-identified information in accordance with 45 C.F.R. §164.502(b), provided that such de-identified information may be used and disclosed only consistent with applicable law. Business Associate may use PHI to provide data aggregation services to the Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B). To the extent required by HIPAA, Business Associate agrees to make reasonable efforts to limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.

4. Reporting of Improper Use and Disclosures of PHI. Business Associate shall notify the Covered Entity within five (5) business days of discovering any suspected or actual use or disclosure of PHI in violation of this BAA by Business Associate, its officers, directors, employees, agents or subcontractors, or by a third party to whom Business Associate disclosed PHI.

5. Reporting of Breaches of Unsecured PHI. Business Associate shall notify the Covered Entity within five (5) business days of discovering a Breach of unsecured PHI in accordance with 45 CFR 164.314.

6. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.

7. Agreements by Third Parties. Business Associate shall enter into an agreement with any agent or subcontractor of Business Associate that will have access to PHI that is received from or is created or received by, Business Associate on behalf of the Covered Entity. Pursuant to such agreement, the agent or subcontractor shall agree to be bound by the same restrictions, terms, and conditions that apply to Business Associate under this BAA with respect to such PHI.

8. Access to Information. To the extent that Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall, within five (5) business days of a request by the Covered Entity for access to PHI about an individual



contained in the Designated Record Set, make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. § 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within two (2) business days forward such request to the Covered Entity.

9. Availability of PHI for Amendment. To the extent that Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall, within ten (10) business days of receipt of a request from the Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. § 164.526.

10. Documentation of Disclosures. To the extent expressly required by 45 C.F.R. § 164.528, Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI, providing Covered Entity with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

11. Accounting of Disclosures. Business Associate shall, within ten (10) business days of notice by the Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, make available to the Covered Entity information collected in accordance with Section 10 of this BAA, to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, to the extent expressly required by 45 C.F.R. § 164.528.

12. Availability of Books and Records. Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity available to the Secretary for purposes of determining the Covered Entity's compliance with the Privacy Standards.

13. Other Transactions. To the extent Business Associate is to carry out a covered entity's obligation under 45 CFR Part 164, Subpart E, Business Associate shall comply with the requirements that apply to the covered entity in the performance of such obligation.

14. Electronic PHI. To the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of the Covered Entity, Business Associate shall comply with the Security Standards as of the relevant, effective date and further, shall:

- (i) Implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, in accordance with 45 CFR 164.500;
- (ii) Ensure that any agent, including a Business Associate, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect it; and
- (iii) Report to the Covered Entity any Security Incident resulting in a Breach of Unsecured PHI of which Business Associate becomes aware.

15. Term, Termination, and Effect of Termination of the BAA.

- (i) Term. This BAA shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created and received by the Business Associate on behalf of the Covered Entity, is returned to the Covered Entity, or, at the Covered Entity's direction, is destroyed.
- (ii) Termination. The Covered Entity or Business Associate may terminate this BAA pursuant to Sections 16 and 17, respectively. This BAA will automatically terminate upon the expiration or termination of the Agreement.
- (iii) Effect of Termination. Except as required by law, upon the termination of the Agreement or this BAA for any reason, Business Associate shall return to the Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity or created or received by the Business Associate on behalf of the Covered Entity that Business Associate



maintains in any form, recorded on any medium, or stored in any storage system, unless said information has been de-identified and is no longer PHI. This provision shall apply to PHI that is in the possession of Business Associate or agents or subcontractors of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this BAA, even after termination of the BAA until such time as all PHI has been returned, de-identified or otherwise destroyed as provided in this Section 15.

16. Breach of Contract by Business Associate. Covered Entity may terminate the Agreement and this BAA if the Covered Entity determines that Business Associate has violated a material term of this BAA and Business Associate fails to cure such violation within thirty (30) days after written notice to Business Associate, provided that if such violation is not susceptible to being cured within such thirty (30) day period, but Business Associate promptly commences such cure, said thirty (30) day period shall be extended so long as Business Associate is actively, diligently and continuously attempting to effectuate such cure.

17. Breach of Contract by The Covered Entity. Business Associate may terminate the Agreement and this BAA if Business Associate knows of a material breach by the Covered Entity that is not cured within thirty (30) days after written notice to Covered Entity, provided that if such violation is not susceptible to being cured within such thirty (30) day period, but Covered Entity promptly commences such cure, said thirty (30) day period shall be extended so long as Covered Entity is actively, diligently and continuously attempting to effectuate such cure. Business Associate will report the problem to the Secretary to the extent expressly required and shall provide advance or simultaneous notice to the Covered Entity.

18. Breach of Contract by a Subcontractor. If Business Associate is aware of a pattern of activity or practice of a subcontractor that constitutes a material breach of violation of the subcontractor's obligations under a contract involving the creation, receipt, maintenance, or transmission of PHI, Business Associate shall take reasonable steps to ensure that the subcontractor cures the breach or ends the violation, as applicable, or the Business Associate shall terminate the contract, if feasible, in accordance with 45 CFR 164.504.

19. Third Party Rights. The terms of this BAA are not intended, nor should they be construed, to grant any rights to any parties other than Business Associate and the Covered Entity.

20. Indemnification and Limitation of Liability. Business Associate shall indemnify and hold harmless the Covered Entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorneys' fees, incurred by the Covered Entity arising from a violation by Business Associate of its obligations under this BAA. NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION IN THIS BAA TO THE CONTRARY, THE TOTAL AMOUNT BY WHICH BUSINESS ASSOCIATE AGREES TO INDEMNIFY THE COVERED ENTITY HEREUNDER SHALL NOT EXCEED THREE MILLION DOLLARS (\$3,000,000.00); PROVIDED, HOWEVER, FINES AND PENALTIES ASSESSED BY THE FEDERAL GOVERNMENT AGAINST THE COVERED ENTITY FOR VIOLATIONS OF FEDERAL LAW AND REGULATIONS CAUSED SOLELY BY BUSINESS ASSOCIATE'S BREACH WILL NOT BE SUBJECT TO THE FOREGOING LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT OR THIS BAA, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THE AGREEMENT OR THIS BAA (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) TO THE MAXIMUM EXTENT PERMITTED BY LAW.

21. Injunctive Relief. Business Associate acknowledges and stipulates that if its unauthorized use or disclosure of PHI while performing services pursuant to the Agreement or this BAA would cause irreparable harm to the Covered Entity, the Covered Entity shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain damages and injunctive relief, together with the right to recover from Business Associate costs, including reasonable attorneys' fees, for any such breach of the terms and conditions of this BAA.

22. Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate pursuant to the terms of this BAA.

23. Changes in the Law. Through a written document signed by the parties, the Covered Entity and Business Associate will amend this BAA, as appropriate, to conform to any new or revised legislation, rules and regulations to which the Covered Entity is subject now or in the future including, without limitation, HIPAA, HITECH and the implementing regulations thereunder.



24. Judicial and Administrative Proceedings. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the Covered Entity shall have the right to control Business Associate’s response to such request. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within twenty-four (24) business hours of receipt of such request. Business Associate shall not provide comment, respond to, or release information in response to a subpoena, court or administrative order or other discovery request or mandate for release of PHI without the Covered Entity’s prior review and approval.

25. Assignment. Neither party may assign this BAA without written consent of the other; provided, however, either party may assign this BAA and delegate its obligations hereunder to any of its affiliates or may assign this BAA to a successor by way of merger or consolidation or the acquisition of substantially all of the business relating to the subject matter of this BAA. Subject to the foregoing, this BAA shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

26. Entire Agreement; Modification. This BAA constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes all previous representations, understandings, and agreements of the parties, whether oral or written, concerning the subject matter hereof. This BAA may only be modified by a written document signed by the parties hereto.

27. Governing Law. This BAA shall be construed pursuant to the laws of the State of Indiana and any suit or action thereon, regardless of when brought, shall be brought in an Indiana court of competent jurisdiction.

28. Notices. All notices given with regard to this BAA shall be in writing. A notice shall be deemed to have been given at the time when mailed by U.S. First Class mail or through the Covered Entity’s internal mail or hand delivered. Notices shall be given for each party to the individual and address listed below unless notice is given otherwise:

For Covered Entity:

For Business Associate:

hc1 Insights, Inc.
 6100 Technology Center Drive, Building K
 Indianapolis, Indiana 46278

Attn: _____

Attn: Chief Privacy Officer
legal@hc1.com

with a copy to Covered Entity’s Chief Information Security Officer or similar designee:

Attn: _____

or to other such address as a party may from time to time designate by notice to the other party.

29. Severability; Waiver. In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this BAA shall remain valid and enforceable according to its terms, except to the extent, if any, that such invalidity or unenforceability may deprive a party to this BAA of a material right or benefit reasonably anticipated by that party in entering into this BAA. The waiver by either party of a breach or violation of any provision of this BAA shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

IN WITNESS WHEREOF, the parties execute this BAA as of the date in which the latter of the two parties signs this BAA.

hc1 Insights, Inc.

“Business Associate”

“Covered Entity”



By: _____

Print Name: _____

Title: _____

Date: _____

By: _____

Print Name: _____

Title: _____

Date: _____



Exhibit D – Terms of Service

1. Terms of Service. Customer acknowledges and agrees to the following Terms of Service, which together with the terms of the Agreement, shall govern Customer's access and use of the Service. Capitalized terms not otherwise defined in the Agreement or herein shall have the meaning given to them in Section 6 (Definitions) below. In addition, Customer agrees that unless explicitly stated otherwise, any new features that augment or enhance the Service, and/or any new service(s) subsequently purchased by the Customer will be subject to the Agreement and these Terms of Service.

1.1 Customer Must Have Internet Access. A broadband Internet connection is required for proper transmission of the Service. Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Service. hc1 Insights is not responsible for any compromise of data or information transmitted across computer networks or telecommunications facilities (including but not limited to the Internet). hc1 Insights assumes no responsibility for the reliability or performance of any networks. Furthermore, hc1 Insights is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software, or for any compromise of data transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned or operated by hc1 Insights.

1.2 Accuracy of Customer's Contact Information. Customer shall provide accurate, current and complete information on Customer's legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change.

1.3 Users Passwords, Access, and Notification. Customer shall authorize access to and assign unique passwords and user names to the number of Users purchased by Customer on the Order Form. User logins are for designated Users and cannot be shared or used by more than one (1) User, but any User login may be reassigned to another User as needed. Customer will be responsible for the confidentiality and use of User's passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. hc1 Insights will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Service and shall promptly notify hc1 Insights of any unauthorized access or use of the Service and any loss or theft or unauthorized use of any User's password or name and/or Service account numbers.

1.4 Customer's Lawful Conduct. The Service allows Customer to send Electronic Communications directly to hc1 Insights and to third parties. Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications and anti-spam legislation. Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service and obtain any permits, licenses, and authorizations required for such compliance. Without limiting the foregoing, (a) Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (b) Customer shall not permit Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (c) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located. Customer will not send any Electronic Communication from the Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by the Agreement or these Terms of Service, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Service by any means other than through the interfaces that are provided by hc1 Insights. Customer shall not do any "mirroring" or "framing" of any part of the Service specific to the Service, or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. Customer will not in any way express or imply that any opinions contained in Customer's Electronic Communications are endorsed by hc1 Insights. Customer shall ensure that all access and use of the Service by Users is in accordance with the terms and conditions of the Agreement, including but not limited to those Users that are contractors and agents, and Customer's Affiliates. Any action or inaction of Customer's employees, contractors, agents are deemed those of Customer, and Customer is responsible for such actions and inaction.



1.5 Third Party Web Sites, Products and Services. hc1 Insights may offer certain Third Party Applications from third parties for sale under Order Forms or as links or integrations to the Service. Any purchase and use of such Third Party Applications by Customer shall be subject to the terms specified by such third parties in connection with such Third Party Applications. hc1 Insights does not provide any warranties with respect to any such Third Party Applications. Any purchase by Customer of any Third Party Applications is solely between Customer and the applicable third party provider. hc1 Insights is not responsible for the availability or the quality, accuracy, integrity, fitness, safety, reliability, legality, or any other aspect of such Third Party Applications or any descriptions, promises or other information related to the foregoing. If Customer installs or enables Third Party Applications for use with the Service, Customer agrees that hc1 Insights may allow such third party providers to access Customer Data as required for the interoperability of such Third Party Applications with the Service, and any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider. hc1 Insights shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Applications or third party providers. No purchase of such Third Party Applications or services is required to use the Service.

1.6 Transmission and Processing of Customer Data; Use of Certain Data. Customer understands that Customer's use of the Service may require the processing and transmission of Customer Data by Customer, hc1 Insights, or its subcontractors. hc1 Insights is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data by means of third party networks (other than third parties providing computing or storage services under these Terms of Service on behalf of hc1 Insights) or otherwise. Furthermore, hc1 Insights is not responsible for (i) verifying or validating the data Customer sends via the hc1 Insights applications or solutions is the data Customer intends to send or that the content and underlying data is complete or accurate data; (ii) verifying or validating the recipient of the data is the intended recipient; or (iii) any loss or misuse of the data or any damages, costs, or fees incurred.

Customer shall promptly notify hc1 Insights of a loss or suspected loss or unauthorized access of the Customer Data. Without limiting Customer's rights and remedies under these Terms of Service, Customer acknowledges that Customer Data and information regarding Customer's account will be processed by hc1 Insights and stored and processed using online hosting services selected by hc1 Insights, such as Amazon Web Services. hc1 Insights may access, use, aggregate, and disclose Customer's De-Identified Data alone or with that of other Users or customers of the Service or Professional Services, as well as other non-personal data generated by the operation of the Service in connection with improving the Service, establishing benchmarks, and to support the Service as the Service functions utilizing the "hc1 Data Lake", defined as a multi-source repository of de-identified and aggregated data. Customer hereby consents to Customer Data being de-identified and aggregated into the hc1 Data Lake in accordance with this Subsection 1.6, provided that in no event may hc1 publish or disclose such data to third parties without removing Customer's name, and all other information which could identify the Customer, from such data. As used herein, (a) "**Customer Data**" means all electronic data or information submitted to the Service by Customer or its Users, (b) "**De-Identification**" or "**De-Identified**" means the de-identification of data in accordance with 45 C.F.R. §164.514(a)-(c), as the same may be amended or succeeded from time to time, (c) "**De-Identified Data**" means data that has been De-Identified, and (d) "**Electronic Communications**" means any transfer of data or information electronically received and/or transmitted through the Service.

1.7 Service Level. During the Term, hc1 Insights will provide the support services and service levels as further specified in the Support and Service Level Agreements attached as [Exhibit E](#), which is incorporated herein by reference.

1.8 Confidentiality. For purposes of this Agreement, "Confidential Information" shall include the terms of the Agreement, Customer Data, each party's proprietary technology, intellectual property, trade secrets, business processes and product information, designs and issues and any information (whether or not reduced to writing or designated as confidential). Confidential Information shall not include: (a) information which is known publicly; (b) information which is generally known in the industry before disclosure; (c) information which has become known publicly, without fault of the receiving party, subsequent to disclosure by the disclosing party; (d) information which the receiving party receives from a third party without a duty of confidentiality, where such third party had the lawful right to disclose such information to the receiving party; or (e) De-Identified Data.

Each receiving party agrees (a) to keep confidential all Confidential Information, (b) not to use or disclose Confidential Information, except to the extent necessary to perform its obligations or exercise its rights under the Agreement or these Terms of Service or as directed by the disclosing party, (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information), and (d) to only make Confidential Information available to authorized persons of the receiving party on a "need to know" basis. Receiving party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of the Agreement or these Terms of Service.



Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or regulation.

1.9 Ownership of Customer Data. All title and intellectual property rights in and to the Customer Data are owned exclusively by Customer. Customer service marks, logos and product and service names are marks of Customer (the “Customer Marks”). Customer grants hc1 Insights during the Term the right to display the Customer Marks on its websites and marketing and other promotional materials. Customer acknowledges and agrees that in connection with the Service, hc1 Insights, as part of its standard service offering, makes backup copies of the Customer Data in Customer’s account and stores and maintains such data for a period of time consistent with hc1 Insights standard business processes.

1.10 hc1 Insights Intellectual Property Rights. Customer agrees that all rights, title, and interest in and to all intellectual property rights in the Service are owned exclusively by hc1 Insights or its licensors. Except as provided in the Agreement, the license granted to Customer does not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. In addition, hc1 Insights shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Service. Any rights not expressly granted herein are reserved by hc1 Insights. hc1 Insights service marks, logos and product and service names are marks of hc1 Insights (the “hc1 Insights Marks”). Customer further agrees not to display or use the hc1 Insights Marks in any manner without hc1 Insights express prior written permission. The trademarks, logos and service marks of Third Party Application providers (“Marks”) are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

1.11 Restrictions. Customer is responsible for all activities conducted under its User logins and for its Users’ compliance with this Agreement. Customer’s use of the Service shall not include service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single User login, or time-sharing of the Service. Customer shall not and shall not permit any third party to (a) copy, translate, create derivative works of, reverse engineer, reverse assemble, disassemble, or decompile the Service or any part thereof or otherwise attempt to discover any source code of modify the Service in any manner or form, (b) use unauthorized modified versions of the Service, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Service, (c) use the Service in a manner that is contrary to applicable law or in violation of any third party rights or privacy or intellectual property rights, (d) publish, post, upload or otherwise transmit Customer Data that contains any virus, Trojanhorses, worms, timebombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another, or (e) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Service.

2. Suspension/Termination.

2.1 Suspension for Delinquent Account. hc1 Insights reserves the right to suspend Customer’s and any Customer Affiliates’ access to and/or use of the Service for any accounts (a) for which any payment is due but unpaid but only after hc1 Insights has provided Customer a delinquency notice, and at least thirty (30) days have passed since the transmission of the first notice, or (b) for which Customer has not paid for the renewal term and has not notified hc1 Insights of its desire to renew the Service by the expiration of the then-current Term. The suspension is for the entire account and Customer understands that such suspension would, therefore, include Customer Affiliate sub-accounts. Customer agrees that hc1 Insights shall not be liable to Customer or to any Customer Affiliate or other third party for any suspension of the Service pursuant to this Section.

2.2 Suspension for Ongoing Harm. Customer agrees that hc1 Insights, may with reasonably contemporaneous notice to Customer (via phone, email or other written notice) suspend access to the Service if hc1 Insights reasonably concludes that Customer’s Service is being used to engage in denial of service attacks, spamming, or illegal activity, and/or Customer’s use of the Service is causing immediate, material and ongoing harm to hc1 Insights or others. In the extraordinary event that hc1 Insights suspends Customer’s access to the Service, hc1 Insights will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and resolve the issues causing the suspension of Service. Customer further agrees that hc1 Insights shall not be liable to Customer nor to any third party for any suspension of the Service under such circumstances as described in this Section.

2.3 Handling of Customer Data in The Event of Termination. Customer agrees that following termination of Customer’s account or use of the Service, hc1 Insights may deactivate Customer’s account and following a reasonable period of not less than



thirty (30) days may delete Customer's account from the Service. During this 30-day period and upon Customer's request, hc1 Insights will grant Customer limited access to the Service for the sole purpose of permitting Customer to retrieve Customer Data, provided that Customer has paid in full all good faith undisputed amounts owed to hc1 Insights. Customer further agrees that hc1 Insights shall not be liable to Customer nor to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that hc1 Insights is in compliance with the terms of this Section.

3. Modification; Discontinuation of the Service.

3.1 To the Service. hc1 Insights may make modifications to the Service or particular components of the Service from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. hc1 Insights reserves the right to discontinue offering the Service at the conclusion of Customer's then-current Term. hc1 Insights shall not be liable to Customer nor to any third party for any modification of the Service as described in this Section.

3.2 To Applicable Terms. If hc1 Insights makes a material change to these Terms of Service, then hc1 Insights will notify Customer by either sending an email to the notification email address or posting a notice in Customer's account. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer shall so notify hc1 Insights via legal@hc1.com in accordance with the notice section of this Agreement within thirty (30) days after receiving notice of the change. If Customer notifies hc1 Insights as required, then Customer will remain governed by the Terms of Service in effect immediately prior to the change until the end of the then-current Term for the affected Service. If the affected Service is renewed, it will be renewed under hc1 Insights' then-current Terms of Service.

4. Access to Books and Records. Until the expiration of four (4) years after the furnishing of any Service pursuant to the Agreement, hc1 Insights shall retain and make available, upon request by the Secretary of the U.S. Department of Health and Human Services, the Comptroller General or any of their duly authorized representatives, the contracts, books, documents, and records of hc1 Insights needed to certify the nature and extent of all Medicare costs with respect to the Service. If hc1 Insights carries out any of the duties of the Agreement using a subcontract with a value of or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related/third-party organization, that subcontract shall also include a clause to this same effect. In the event the Agreement is not subject to the provision of 42 U.S.C. 1395x(v)(1)(I) and 42 C.F.R. 420.300 et seq. or relevant regulations, this section shall be null and void.

5. Screening for Viruses and Malicious Code. hc1 Insights will use commercially reasonable measures, including generally accepted virus screening software, to protect the Service and its systems or software used from viruses and other malicious code. In the event that any viruses and other malicious code are discovered, they will be corrected pursuant to the provisions of this Agreement relating to support.

6. Definitions.

"Affiliates" means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Customer, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of Customer.

"Customer" shall have the meaning ascribed to it in the preamble of the Agreement.

"Customer Data" means all electronic data or information submitted to the Service by Customer or its Affiliates.

"Electronic Communications" means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

"hc1 Insights" means hc1 Insights, Inc., an Indiana corporation, with its principal place of business located at 6100 Technology Center Drive, Building K, Indianapolis, IN 46278.

"Order Form" means a hc1 Insights renewal notification or order form in the name of and executed by Customer or a Customer Affiliate and accepted by hc1 Insights which specifies the Service and Professional Services to be provided by hc1 Insights subject to the terms of the Agreement.



“Professional Services” means services performed by hc1 Insights’ services team, including, but not limited to, initial activation, configuration, business intelligence reporting, and training.

“Service” means hc1 Insights’ online business application suite of services and solutions as described in marketing materials or other documentation and that is purchased by Customer from hc1 Insights in an Order Form from time to time, including associated offline components, but excluding Third Party Applications and Professional Services. The “Service” may also be referenced as the “Subscription Service” from time to time.

“Subscription Fees” means the fees paid by Customer for the Service as provided on an Order Form.

“Third Party Applications” means online, Web-based applications and offline software products that are provided by third parties, and interoperate with the Service.

“Users” means individuals who are authorized by Customer to use the Service, for whom subscriptions to a Service has been purchased, and who have been supplied user identifications and passwords by Customer (or by hc1 Insights at Customer’s request). Users may include but are not limited to Customer and Customer’s Affiliates’ employees, consultants, contractors, and agents.



Exhibit E – Support and Service Level Agreement

This Support and Service Level Agreement outlines the hc1 Insights' support services. Support services are provided with a Subscription to hc1 Insights for customers under contract with hc1 Insights. Capitalized terms not defined in this Support and Service Level Agreement have the meaning given to them in the Agreement or the Terms of Service (“Exhibit E”).

1. Definitions.

“**Business Days**” means Monday through Friday except for Federal holidays.

“**Period**” means a five (5) minute interval of time.

“**Service Credit**” means a dollar credit against future Subscription Fees that hc1 Insights will credit back to the Customer.

“**Service Month**” means a period of thirty (30) consecutive days used to measure the Uptime Commitment. By way of an example, if the Service Month begins on March 5 of a calendar month, such Service Month shall end of April 4 of the following calendar month.

“**Support**” means the maintenance and support services described in this support and service level agreement hc1 Insights provides to Customer throughout the Term upon payment of the Subscription Fees or support services fees if Customer upgrades support services.

“**Unavailable**” means unavailable for use by Customer due to any form of downtime, except for (a) maintenance, or (b) those instances that fall within an Exclusion.

2. Availability. The Service will not be Unavailable for more than 3.6 hours (99.5% availability) per Service Month throughout the Term of this Agreement (the “Uptime Commitment”). In the event hc1 Insights fails to meet such Uptime Commitment, the Customer is eligible to receive a Service Credit, which will be equal to the number of Periods beyond the Uptime Commitment for which the Service is Unavailable during a particular Service Month, multiplied by the Subscription Fees paid for the Service Month divided by the number of Periods in the Service Month. The total Service Credits shall not exceed 50% of the paid Subscription Fees for that month. A Service Credit will apply against future Subscription Fees otherwise due from Customer. Service Credits do not entitle Customer to any additional payments from hc1 Insights.

The Service shall not be deemed Unavailable if the cause of the unavailability is due to any of the following, hereinafter, and each, an “Exclusion”: (a) the suspension or termination of Customer’s or User’s right to use the Service in accordance with the Agreement; (b) factors outside of hc1 Insights’s reasonable control, including a Force Majeure Event, Internet access or related problems beyond the demarcation point of hc1 Insights’s hosting provider, services provided by a third party that are made available to Customer via the Service; or (c) the action or inaction of Customer or a User.

3. Credit Request and Payment Procedures. To receive a Service Credit, Customer must submit a request by sending an e-mail message to sla-request@hc1.com. The Service Credit request must:

- (i) include Customer’s account number in the subject of the e-mail message;
- (ii) include, in the body of the e-mail, the dates and times of each incident the Customer claims the Service was Unavailable;
- and
- (iii) be received by hc1 Insights within sixty (60) business days of the last reported incident in the request.

hc1 Insights will confirm the extent to which the Service was Unavailable as claimed in the request, and if each instance is affirmatively confirmed by hc1 Insights, then hc1 Insights will issue the Service Credit to Customer (a) after the anniversary of the Effective Date following the date in which the Service was Unavailable or (b) at the time Customer signs an Order Form for additional Services, whichever occurs first.

4. Maintenance. hc1 Insights will perform routine and when needed, emergency maintenance from time to time as described in this Section.



- **Scheduled Maintenance.** hc1 Insights will routinely perform maintenance on Wednesday, Friday or Sunday between the hours of 11:00 PM and 3:00 AM, Eastern Time. This maintenance may require specific Services to be suspended during the maintenance period. hc1 Insights will endeavor to provide notice two (2) Business Days in advance of such maintenance.
- **Emergency Maintenance.** Under certain circumstances, hc1 Insights may need to perform emergency maintenance, such as security patch installation or hardware replacement. hc1 Insights reserves the right to perform such maintenance at any time and without advance notice in case of emergency maintenance.

In addition to performing maintenance, hc1 Insights will use industry standard practices to determine whether server hardware is functioning properly and will replace non-functioning hardware with similarly functioning hardware of equal or greater quality. hc1 Insights shall use commercially reasonable efforts to implement hardware replacement. Unless an emergency situation, such replacement shall take during scheduled maintenance.

5. Customer Care. This section relates to the contents of maintenance and support services (“Customer Care”) to be provided to Customer during the Term. hc1 Insights shall provide standard Customer Care as described in the ‘*hc1 Insights Customer Care Standard Support*’ table below. hc1 Insights shall provide Customer Care Services during the Term subject to the payment of all fees when due.

Furthermore, hc1 Insights shall (a) provide to Customer standard customer care as outlined below, and if selected by Customer upgraded customer care, for the Service at such fees as further described in the Order Form, (b) use commercially reasonable efforts to make the Service available, and (c) provide the Service only in accordance with applicable laws and government regulations.

Customer Care calls and emails are handled by a hc1 Insights support analyst. Each issue is logged at intake into hc1 Insights’s Customer Care ticketing system and assigned an incident number for the customer’s future reference. Response, Analysis, Interim and Final Resolution are documented using this log to ensure continuity throughout the process and to provide future reference for others encountering similar issues. Each customer may receive the current status of the customer’s problem by contacting hc1 Insights and requesting the status of the assigned incident number.

hc1 Insights’ Standard Customer Care

Support Hours	9 am - 5 pm, Eastern Time, Business Days	
Submission Channels	Customer Care Line and Online Portal	
Response Time*		
Severity Level 1	2 hours	<u>Description:</u> A catastrophic production problem resulting in production unavailability
Severity Level 2	2 hours	<u>Description:</u> An instance in which a Customer’s production environment is functioning but in a severely reduced capacity. Customer’s production environment is exposed to loss or interruption in service.
Severity Level 3	3 – 5 Business Days	<u>Description:</u> A problem that involves partial or non-critical functionality loss. Customer resources may be required to resolve the problem and impact to Customer operations may exist. Workarounds may exist.
Severity Level 4	3 – 5 Business Days	<u>Description:</u> General issues, usage issues, questions, or recommendation for future product enhancements and/or modifications. There is only



		minor impact on the quality, performance, or functionality of the product.
Initial Analysis**		
Severity Level 1/Severity Level 2	4 hours	

*Response time begins when hc1 Insights receives the Customer call or inquiry via the online submission form.

**Initial analysis begins when hc1 Insights responds to the Customer call or inquiry via the online submission form.

All support requests should be made through the authorized support contact and/or system admin.