

AASM Sleep™ Pro and Select Software Services and License Agreement

THIS SOFTWARE SERVICES AND LICENSE AGREEMENT (the “**Services Agreement**”), dated the later of the two dates on which this Services Agreement is electronically signed by User (as defined below) and accepted by AASM (as defined below) (the “**Effective Date**”), is entered into between AASM Sleep™, LLC (“**AASM**”), an Illinois limited liability company, and the entity or individual who electronically signs this Services Agreement (“**User**”) (AASM and User may be referred to individually as “**Party**” and collectively as “**Parties**”). AASM is the owner of a suite of software-as-a-service products designed to facilitate the provision of sleep medicine and sleep health care via remote presence technology (collectively, the “**Telemedicine System**”). User is a medical group, dental group, accredited sleep disorder center, durable medical equipment company or other type of health care provider that wishes to provide care services to patients using the Telemedicine System. User wishes to procure from AASM the right to access and use the Telemedicine System and to receive certain related services, and AASM wishes to provide such Services to User, each on the terms and conditions set forth in this Services Agreement. The Parties hereby agree as follows:

1. DESCRIPTION OF SERVICES.

(a) This Agreement establishes a contractual relationship between AASM and User pursuant to which AASM will provide User with access to the Telemedicine System (either AASM Sleep™ Pro or Select) and certain related services as described in this Agreement (“**Services**”). The Telemedicine System will enable Users to view information provided by patients via the Telemedicine System and may have additional functionalities depending on the version of the Telemedicine System selected by User. Additional Information about the versions of the Telemedicine System are available on the AASM Sleep™ website.

(b) AASM may reasonably supplement, modify, substitute or otherwise alter the Telemedicine System, as well as the Services provided under this Agreement, from time to time, with or without notice to User. The determination of whether a change is a material change rests solely with AASM.

(c) User may select the option of offering User’s patients a “self-pay” option, enabling them to pay for the services with a credit card. To facilitate this option, AASM has contracted with a third-party credit card payment processor (“**Credit Card Processor**”) to collect and process the credit card information of User’s patients and then remit these payments to User’s designated bank account. AASM will not store, process or transmit credit card information and has no responsibility for the performance of these functions. User and its providers are responsible for acting in a manner in full compliance with all applicable federal, state and local laws, regulations and other legal standards, including but not limited to all applicable Medicaid and Medicare program patient billing and notice requirements, and the terms of any contract between User (or its providers) and any payer (“**Applicable Laws**”). AASM encourages Users to consult with local counsel for legal advice or guidance in connection with using the Telemedicine System and billing patients or payers for telemedicine services. User represents and warrants that it will fully comply with all Applicable Laws when using the Telemedicine System, including the Self-Pay Option. User shall cooperate with all requests made by the Credit Card Processor to facilitate the performance of its functions, including but not limited to providing Credit Card Processor with User’s bank account information for purposes of remitting payment to User. User will comply with the policies and procedures of Credit Card Processor to the extent applicable. User authorizes (1) Credit Card Processor to withhold its transaction fees for each credit card transaction processed by Credit Card Processor and will execute any agreements required by Credit Card Processor to this effect, and (2) AASM to withhold a fixed amount as consideration for its administrative services. User will be notified of the amount of the Credit Card Processor’s transaction fee by Credit Card Processor.

2. TRIAL PERIOD AND FEES.

(a) Subject to all terms and conditions of this Agreement, except as otherwise stated herein, AASM will provide User with access to the Telemedicine System for seven (7) days (or longer if approved by AASM for certain Users) to explore its functionalities and capabilities in a test environment for no financial cost to User. Upon conclusion of any trial period of the Telemedicine System (if offered by AASM and applicable to User), the User has the option to extend access to the Telemedicine System, subject to the terms and conditions of this Agreement, by paying the fees associated with the package selected by the User at the time of registration, which are listed in Attachment A and on the AASM SleepTM website. AASM reserves the right to cancel any free trial of the Telemedicine System without notice to User.

(b) Upon conclusion of any complimentary trial period, User will be responsible for paying all fees associated with the license and use of the Telemedicine System. **All fees associated with the license of the Telemedicine System, which may include annual fees and fees for data, shall be found on the AASM SleepTM website. The fees that are listed on the AASM SleepTM website at the time that this Agreement is electronically signed by User are the fees that shall govern this Agreement until such fees are adjusted by AASM SleepTM at a future date. For the avoidance of any doubt, the fees for the license and use of Telemedicine System are subject to change without notice.**

3. LICENSE. AASM grants User a non-exclusive license during the term of the Services Agreement to access and Use the Telemedicine System solely in connection with User's business and to permit the employees and agents of User who provide health care services on User's behalf to do the same, subject to all of the conditions and restrictions set forth in the License Addendum, which is attached hereto as Attachment A and hereby incorporated herein. Any provisions of the License Addendum holding User to more stringent requirements shall prevail over less stringent provisions of this Services Agreement. Without limiting any provision of the License Addendum, User acknowledges that the Telemedicine System represents and will continue to represent the valuable, confidential and proprietary property of AASM and its affiliates. AASM is not by this Agreement conveying to User any proprietary or other rights (including any patent rights, copyrights, trade secrets, trademarks, service marks and related goodwill) in the Telemedicine System, except as expressly set forth in the License Addendum. Accordingly, each User acknowledges that, except as expressly provided for in the License Addendum, neither the User, nor any of its shareholders, directors, employees or agents, possesses any right, title or ownership in or to the Telemedicine System.

4. TERM AND TERMINATION.

(a) The term of this Services Agreement shall commence as of the Effective Date and shall continue unless otherwise terminated as provided herein. Thereafter, the Services Agreement shall be automatically extended for additional one-year terms or upon such other terms and conditions as may be agreed upon by the Parties and memorialized in a written amendment to this Services Agreement.

(b) This Services Agreement may be terminated by either Party, with or without cause and without penalty, upon the provision of thirty (30) days written notice.

(c) In the event of a material breach of this Services Agreement, this Services Agreement may be terminated by the non-breaching Party immediately upon written notice to the other Party.

(d) The termination of this Services Agreement shall not release or discharge either Party from any obligation, debt or liability which shall have previously accrued and remain to be performed upon the date of termination.

5. USER'S REPRESENTATIONS, WARRANTIES AND COVENANTS. User represents and warrants that, at all times during the term of this Services Agreement, User and each of its employees, contractors or agents who use or have access to the Telemedicine System, shall conduct its activities under this Agreement, including its use of the Telemedicine System, in full compliance with all applicable federal, state and local laws, regulations and other legal standards, including but not limited to state licensure and registration, scope of practice, informed consent and recordkeeping requirements.

6. HIPAA AND HITECH. Each Party will maintain the confidentiality of all protected health information, and will at all times comply with all applicable federal, state and local laws and regulations, including but not limited to, the applicable provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d, et seq. and 45 C.F.R. §§ 160, 162 and 164 (“**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”) in connection with the use and disclosure of protected health information, in accordance with the terms and conditions of the HIPAA Business Associate Addendum, attached hereto as Attachment B.

7. INDEPENDENCE OF PROFESSIONAL JUDGMENT. Neither Party shall exercise any control or direction over the specific methods by which the physicians practice medicine or provide the Telehealth Care. Nothing contained in this Services Agreement shall require referrals to specific health care facilities, interfere with patients’ choice of medical treatment, or interfere with the any physician’s independent medical judgment.

8. DISCLAIMER OF LEGAL ADVICE. AASM may from time to time provide information and resources to Users including, but not limited to, sample website terms and conditions. The provision of this information or sample materials shall not be intended as the provision of legal advice or guidance. AASM encourages Users to consult with local counsel for legal advice or guidance in connection with using the AASM SleepTM.

9. INSURANCE. User shall maintain (or its employee, contractor or agent shall maintain) professional malpractice protection for each of the User’s employees, contractors or agents who provide health care services using the Telemedicine System through an appropriate commercial insurer with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate. Upon expiration or termination of this Services Agreement, in the event User has afforded any physicians with any insurance coverage required pursuant to this Services Agreement on a claims made basis in lieu of occurrence based insurance coverage, User shall ensure that coverage remains in place for occurrences during the term(s) of this Services Agreement, either by maintaining claims made coverage or purchasing or providing an extended reporting endorsement for each such individual.

10. TRADEMARKS AND APPROVAL OF USER MATERIALS. AASM is and shall remain the sole owner of the following marks: “AASM SleepTM.” Any and all User advertising, promotional and other materials which mention AASM SleepTM or AASM, or include any other AASM Marks, shall be subject to AASM’s prior review and written approval, which approval shall not be unreasonably withheld.

11. CONFIDENTIAL AND PROPRIETARY INFORMATION. Neither Party shall disclose any Confidential Information, as hereinafter defined, of the other Party without the other Party’s express written authorization (with the exception of AASM’s disclosure of information to the American Academy of Sleep Medicine); such Confidential Information will not be used in any way directly or

indirectly detrimental to the disclosing Party; and each Party will keep the other Party's Confidential Information confidential and will ensure that its employees and agents who have access to such Confidential Information comply with these nondisclosure obligations. "Confidential Information" shall include User records, AASM records, and all other confidential information of either Party (whether written or oral), including all confidential notes, studies, forms, business or management methods, marketing data, or trade secrets of such Party, except for information that is available to and known by the public (other than as a result of an unpermitted disclosure directly or indirectly by the receiving Party or its representatives). The obligation to maintain the confidentiality of Confidential Information shall survive termination of this Services Agreement.

12. MUTUAL INDEMNIFICATION FOR THIRD PARTY CLAIMS. Each Party to this Services Agreement shall indemnify and hold the other Party to this Services Agreement harmless from any and all claims asserted against the indemnified Party by any person who is not a party to this Services Agreement (and all related liabilities, costs and expenses of any kind whatsoever, including but not limited to attorneys' fees and court costs), arising out of any breach by the indemnifying Party, its agents, employees, or servants of any covenant or condition of this Services Agreement or arising out of negligent or intentional acts or failures to act of the indemnifying Party, its agents, employees or servants. The obligations herein shall survive termination of this Services Agreement. This indemnity shall not apply to any claim covered by insurance. If any Party has reason to believe that it has suffered or incurred (or has a reasonable belief that it will suffer or incur) any indemnified loss subject to the indemnity hereunder, such Party shall so notify the indemnifying Party promptly in writing describing such loss or expense. With respect to any action at law, suit in equity, administrative action or arbitration or mediation proceeding that is instituted by or against a third party with respect to which any person intends to claim any liability or expense under this Section, the indemnifying Party shall have twenty (20) business days after receipt of the notice to notify the indemnified Party that it elects to participate in the conduct of any action, suit or proceeding with respect to such claim. If the indemnifying Party does not give such notice, the indemnified Party shall defend, contest, settle or compromise such action, suit or proceeding in the exercise of its exclusive discretion. If the indemnifying Party gives such notice, the indemnifying Party shall have the right, at its sole expense, to participate in the conduct and settlement of such action, suit or proceeding and both Parties shall cooperate with the other in connection therewith.

13. ARBITRATION, GOVERNING LAW AND JURISDICTION FOR DISPUTE RESOLUTION. Any controversy or claim arising out of or relating to this Services Agreement, or the breach thereof, that cannot be resolved directly between the Parties, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules applying the laws of the State of Illinois, and judgment on the award rendered by the arbitrator(s) shall be entered in the Circuit Court of Cook County, Illinois. If, notwithstanding the preceding provision, a court of competent jurisdiction determines that an action or a proceeding may be brought by a Party in connection with this Services Agreement, the validity, construction and effect of the Services Agreement, and all extensions and modifications thereof, shall be construed in accordance with the laws of the State of Illinois. Any disputes or claims arising out of this Services Agreement or any other matter related hereto shall be brought into the appropriate court of Cook County, Illinois or in the United States District Court for the Northern District of Illinois, as may be appropriate, and the Parties agree to submit to the *in personam* jurisdiction and venue of said courts. The prevailing Party shall be entitled to all costs, including reasonable attorneys' fees, incurred to enforce its rights hereunder.

14. INDEPENDENT CONTRACTORS. The relationship between the Parties under this Services Agreement shall be solely that of independent contractors entering into a services agreement. No representations or assertions shall be made or actions taken by any Party which could imply or establish any joint venture, partnership, employment or trust relationship between the Parties with respect to the subject matter of this Services Agreement. No Party shall have any authority or power whatsoever

to enter into any agreement, contract or commitment on behalf of the other Party or create any liability or obligation whatsoever on behalf of the other Party to any person or entity.

15. NO ASSIGNMENT. Except as otherwise provided herein, this Services Agreement may not be assigned, or the rights granted herein transferred or sublicensed, by User without the express prior written consent of AASM. The Telemedicine System and User's account therein cannot be assigned, transferred or used by anyone other than User or User's designated users without AASM's written permission. Any attempted assignment in contravention of this Section shall be of no force or effect and shall not act to relieve User of any responsibility or liability under this Services Agreement. Any attempted assignment in contravention of this Section shall not act to convey, transfer or assign any rights to any third party and no such rights shall inure to the benefit of any such third party. AASM may assign its rights, obligations or interest under this Services Agreement to any third party that assumes responsibility for fulfilling this Services Agreement in accordance with its terms and conditions.

16. MISCELLANEOUS. Each Attachment shall incorporate by reference the provisions of this Services Agreement as though such provisions were set forth therein in their entirety; provided that, any provisions of the Attachments holding User to more stringent requirements shall prevail over less stringent provisions of this Services Agreement. All provisions of this Services Agreement shall be binding upon the Parties hereto, their respective successors, legal representatives and assigns. The electronic execution and performance of this Services Agreement by User has been duly authorized by an individual with the authority to bind User to its terms. No waiver by any Party hereto of any of its rights under this Services Agreement shall be effective unless in writing and signed by an officer of the Party waiving such right. This Services Agreement may not be modified except by a writing signed by each of the Parties hereto. The descriptive headings of the several sections hereof are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. Wherever possible each provision of this Services Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Services Agreement.

Any notice by any of the Parties to the other Party shall be in writing and shall be deemed to have been given on the earlier of (a) the date on which it is delivered personally, or (b) four days after its deposit in the U.S. Mail, postage prepaid, certified with return receipt requested, and addressed to AASM SleepTM at following address and to User at the address provided during the registration process. AASM SleepTM, LLC, 2510 North Frontage Road, Darien, IL 60561, Attention: Steve Van Hout.

This Services Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof, and cancels and supersedes any and all prior written or oral contracts or negotiations between the Parties hereto with respect to the subject matter hereof. It may be amended only by written agreement executed by both Parties. This Services Agreement shall not be valid or enforceable until it is accepted by AASM.

ATTACHMENT A

LICENSE TERMS AND FEES

LICENSE TERMS

1. All rights not expressly granted to User by the Services Agreement (including this Attachment A) are reserved for AASM. Without limiting the generality of the previous sentence, and except to the extent specifically permitted in this Attachment A, User may not: (a) modify the Telemedicine System or separate out any of its components for use with other software; (b) permit another person other than User's designees to use the Telemedicine System; (c) decompile, disassemble, or otherwise reverse engineer the Telemedicine System; (d) remove, obscure or alter any notice of copyright, trademark or other proprietary right present on or in the Telemedicine System or (e) resell the Telemedicine System or provide the Telemedicine System to or on behalf of other entities. User understands that the Telemedicine System is licensed to User and not sold. AASM retains title to and ownership of all right, title and interest, including all intellectual property rights in and with respect to the Telemedicine System, materials and documentation.
2. Use of the Telemedicine System will involve transmitting information about User and User's business (e.g. practice information and patient records) through the Telemedicine System and may involve listing User's participation in relevant directories or marketing materials. User hereby expressly grants AASM and its affiliates permission to use this information for such use and listings.
3. AASM may occasionally provide updates and modifications to the Telemedicine System in its sole and absolute discretion. AASM does not warrant that there will be any specified number of updates or modifications, if at all, to the Telemedicine System, or that any or all errors will be addressed or resolved by an update or modification. AASM has no obligation to notify User of any modifications or changes to the system.
4. User agrees to use the Telemedicine System provided by AASM only for lawful purposes. Transmission or publication of any information, data or material in violation of any U.S. Federal, state or foreign regulation or law, including export control laws, is prohibited. This includes, but is not limited to, material protected by copyright, trade secret, privacy rights, or any other statute.
5. *The Telemedicine System is provided to User "AS-IS" and AASM makes no warranties of any kind, whether expressed or implied, for the Telemedicine System or any other service AASM provides User. AASM also disclaims any warranty of merchantability, fitness for a particular purpose, title and non-infringement. AASM is not responsible for damages User suffers from use of the Telemedicine System, including loss of data resulting from delays, non-deliveries, misdeliveries, data-entry errors, incorrect diagnoses (including by User's agents or other representatives), service interruptions or security breaches, whether caused by User's or AASM's negligence, User's errors or omissions, or due to the fault of third parties. Neither AASM nor its affiliates or agents shall be liable for any lost profits, lost data, special, incidental, consequential, indirect or exemplary damages, even if advised of the possibility of such damages. AASM's liability under this Services Agreement, whether arising under theory of contract, tort (including negligence), strict liability or otherwise, shall in no event exceed the amount of any fees paid by User to AASM for the 180 day period immediately preceding the time that such liability first accrues.*
6. *AASM does not and cannot control the flow of data to or from the Telemedicine System. Such flow depends in large part on the performance of internet service providers or is otherwise controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt or slow connections to the Internet (or portions thereof). Although AASM will use commercially reasonable efforts to remedy such events, AASM cannot guarantee that such events will not occur. Accordingly,*

AASM disclaims any and all liability, express or implied, resulting from or related to communication or data transmission failures or latencies or security breaches.

- 7. User acknowledges and agrees that the provisions under this Attachment A that limit liability, disclaim warranties, or exclude consequential damages or other damages or remedies are essential terms of this Services Agreement that are fundamental to the Parties' understanding regarding allocation of risk. Accordingly, such provisions shall be severable and independent of any other provisions and shall be enforced as such, regardless of any breach or other occurrence hereunder. Without limiting the generality of the foregoing, User agrees that all limitations of liability, disclaimers of warranties, and exclusions of consequential damages or other damages or remedies shall remain fully valid, effective and enforceable in accordance with their respective terms, even under circumstances that cause any exclusive remedy under the Services Agreement to fail of its essential purpose.*
8. Upon notice, published online by AASM, by email to User, or through whatever other means as determined by AASM, AASM may modify the terms and conditions of this license, as well as discontinue or change the services offered. User's continued use of the Telemedicine System after the effective date of any such notice constitutes acceptance of the terms of this Attachment A, as modified.
9. Through use of the Telemedicine System, AASM and its service providers (including Google Analytics) may collect and track certain information such as browser type, time spent on the Telemedicine System, pages visited, language preferences, and other anonymous traffic data, using cookies or other similar technologies. AASM and our service providers may use the information for security purposes, to facilitate navigation, display information more effectively, and to personalize the User experience while using the Telemedicine System. More information is available at www.google.com/policies/privacy/partners/.
10. User shall ensure that its webpage on the Telemedicine System and any content User posts thereon complies with applicable laws and regulations, and User will provide a privacy policy to the extent so required.

ATTACHMENT B

BUSINESS ASSOCIATE ADDENDUM

I. GENERAL PROVISIONS

Section 1.1. Status of Parties Under HIPAA. The Parties acknowledge and agree that User is a Covered Entity (as defined by HIPAA) and AASM is a Business Associate (as defined by HIPAA) of User when AASM creates, receives, maintains, transmits, uses or discloses Protected Health Information on behalf of User.

Section 1.2. Effect. To the extent that AASM receives Protected Health Information from or on behalf of User (“**PHI**”) to perform Business Associate activities, the terms and provisions of this Addendum shall supersede any other conflicting or inconsistent terms and provisions in this Agreement to the extent of such conflict or inconsistency.

Section 1.3. Defined Terms. Capitalized terms used in this Agreement (including this Addendum) without definition shall have the respective meanings assigned to such terms by the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and their implementing regulations as amended from time to time (collectively, “**HIPAA**”).

Section 1.4. No Third Party Beneficiaries. The parties have not created and do not intend to create by this Agreement any third party rights, including, but not limited to, third party rights for User’s patients.

Section 1.5. HIPAA Amendments. The parties acknowledge and agree that the Health Information Technology for Economic and Clinical Health Act and its implementing regulations impose requirements with respect to privacy, security and breach notification applicable to Business Associates (collectively, the “**HITECH BA Provisions**”). The HITECH BA Provisions and any other future amendments to HIPAA affecting Business Associate agreements are hereby incorporated by reference into this Agreement as if set forth in this Agreement in their entirety, effective on the later of the effective date of this Agreement or such subsequent date as may be specified by HIPAA.

Section 1.6. Regulatory References. A reference in this Addendum to a section in HIPAA means the section as it may be amended from time-to-time.

II. OBLIGATIONS OF THE COMPANY

Section 2.1. Use and Disclosure of PHI. AASM may use and disclose PHI as permitted or required under this Agreement (including this Addendum) or as Required by Law, but shall not otherwise use or disclose any PHI. AASM shall not use or disclose PHI received from User in any manner that would constitute a violation of HIPAA if so used or disclosed by User (except as set forth in Sections 2.1(a), (b) and (c) of this Addendum). To the extent AASM carries out any of User’s obligations under the HIPAA privacy standards, AASM shall comply with the requirements of the HIPAA privacy standards that apply to User in the performance of such obligations. Without limiting the generality of the foregoing, AASM is permitted to use or disclose PHI as set forth below:

(a) AASM may use PHI internally for AASM’s proper management and administration or to carry out its legal responsibilities.

(b) AASM may disclose PHI to a third party for AASM's proper management and administration, provided that the disclosure is Required by Law or AASM obtains reasonable assurances from the third party to whom the PHI is to be disclosed that the third party will (1) protect the confidentiality of the PHI, (2) only use or further disclose the PHI as Required by Law or for the purpose for which the PHI was disclosed to the third party and (3) notify AASM of any instances of which the third party is aware in which the confidentiality of the PHI has been breached.

(c) AASM may use PHI to provide Data Aggregation services relating to the Health Care Operations of User if required or permitted under this Agreement.

(d) Business Associate may use PHI to create de-identified health information in accordance with the HIPAA de-identification requirements. Business Associate may disclose de-identified health information for any purpose permitted by law.

Section 2.2. Safeguards. AASM shall use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted or required by this Addendum. In addition, AASM shall implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI transmitted or maintained in Electronic Media ("**EPHI**") that it creates, receives, maintains or transmits on behalf of User. AASM shall comply with the HIPAA Security Rule with respect to EPHI.

Section 2.3. Minimum Necessary Standard. To the extent required by the "minimum necessary" requirements of HIPAA, AASM shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

Section 2.4. Mitigation. AASM shall take reasonable steps to mitigate, to the extent practicable, any harmful effect (that is known to AASM) of a use or disclosure of PHI by AASM in violation of this Addendum.

Section 2.5. Trading Partner Agreement. AASM shall not take any of the following actions: change the definition, Data Condition, or use of a Data Element or Segment in a Standard; add any Data Elements or Segments to the maximum defined Data Set; use any code or Data Elements that are either marked "not used" in the Standard's Implementation Specification or are not in the Standard's Implementation Specification(s); or change the meaning or intent of the Standard's Implementation Specification(s).

Section 2.6. Subcontractors. AASM shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor (including, without limitation, a Subcontractor that is an agent under applicable law) that creates, receives, maintains or transmits PHI on behalf of AASM. AASM shall ensure that the written agreement with each Subcontractor obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to AASM under this Addendum.

Section 2.7. Reporting Requirements.

(a) If AASM becomes aware of a use or disclosure of PHI in violation of this Agreement by AASM or a third party to which AASM disclosed PHI, AASM shall report the use or disclosure to User without unreasonable delay.

(b) AASM shall report any Security Incident involving EPHI of which it becomes aware in the following manner: (a) any actual, successful Security Incident will be reported to User in writing without unreasonable delay, and (b) any attempted, unsuccessful Security Incident of which AASM

becomes aware will be reported to User orally or in writing on a reasonable basis, as requested by User. If the HIPAA security regulations are amended to remove the requirement to report unsuccessful attempts at unauthorized access, the requirement hereunder to report such unsuccessful attempts will no longer apply as of the effective date of the amendment.

(c) AASM shall, following the discovery of a Breach of Unsecured PHI, notify User of the Breach in accordance with 45 C.F.R. § 164.410 without unreasonable delay and in no case later than 60 days after discovery of the Breach.

Section 2.8. Access to PHI. Within 15 business days of a request by User for access to PHI about an Individual contained in any Designated Record Set of User maintained by AASM, AASM shall make available to User such PHI for so long as AASM maintains such information in the Designated Record Set. If AASM receives a request for access to PHI directly from an Individual, AASM shall forward such request to User within ten business days. User shall have the sole responsibility to make decisions regarding whether to approve a request for access to PHI.

Section 2.9. Availability of PHI for Amendment. Within 15 business days of receipt of a request from User for the amendment of an Individual's PHI contained in any Designated Record Set of User maintained by AASM, AASM shall provide such information to User for amendment and incorporate any such amendments in the PHI (for so long as AASM maintain such information in the Designated Record Set) as required by 45 C.F.R. § 164.526. If AASM receives a request for amendment to PHI directly from an Individual, AASM shall forward such request to User within ten business days. User shall have the sole responsibility to make decisions regarding whether to approve a request for an amendment to PHI.

Section 2.10. Accounting of Disclosures. Within 15 business days of notice by User to AASM that it has received a request for an accounting of disclosures of PHI (other than disclosures to which an exception to the accounting requirement applies), AASM shall make available to User such information as is in AASM's possession and is required for User to make the accounting required by 45 C.F.R. § 164.528. If AASM receives a request for an accounting directly from an Individual, AASM shall forward such request to User within ten business days. User shall have the sole responsibility to provide an accounting of disclosures to the Individual.

Section 2.11. Availability of Books and Records. AASM shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by AASM on behalf of, User available to the Secretary for purposes of determining User's and AASM's compliance with HIPAA.

III. OBLIGATIONS OF THE USER

Section 3.1. Permissible Requests. User shall not request AASM to use or disclose PHI in any manner that would not be permissible under HIPAA if done directly by User (except as provided in Sections 2.1(a), (b) and (c) of this Addendum).

Section 3.2. Minimum Necessary PHI. When User discloses PHI to AASM, User shall provide the minimum amount of PHI necessary for the accomplishment of AASM's purpose.

Section 3.3. Permissions; Restrictions. User warrants that it has obtained and will obtain any consents, authorizations and/or other legal permissions required under HIPAA and other applicable law for the disclosure of PHI to AASM. User shall notify AASM of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect AASM's use or disclosure of PHI. User shall not agree to any restriction on the use or disclosure of PHI

under 45 C.F.R. § 164.522 that restricts AASM's use or disclosure of PHI under this Agreement unless such restriction is Required By Law or AASM grants its written consent, which consent shall not be unreasonably withheld.

Section 3.4. Notice of Privacy Practices. Except as Required By Law, with AASM's consent or as set forth in this Agreement, User shall not include any limitation in the User's notice of privacy practices that limits AASM's use or disclosure of PHI under this Agreement.

IV. TERMINATION OF THIS AGREEMENT

Section 4.1. Termination Upon Breach of this Addendum. Any other provision of this Agreement notwithstanding, either party (the "**Non-Breaching Party**") may terminate this Agreement upon 30 days advance written notice to the other party (the "**Breaching Party**") in the event that the Breaching Party materially breaches this Addendum and such breach is not cured to the reasonable satisfaction of the Non-Breaching Party within such 30-day period.

Section 4.2. Return or Destruction of PHI upon Termination. Upon expiration or earlier termination of this Agreement, AASM shall either return or destroy all PHI received from User or created or received by AASM on behalf of User and which AASM still maintains in any form. Notwithstanding the foregoing, to the extent that AASM reasonably determines that it is not feasible to return or destroy such PHI, the terms and provisions of this Addendum shall survive termination of this Agreement and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

V. LIMITATION OF LIABILITY

Section 5.1. Limitation of Liability. In no event shall AASM's and its present and former affiliates', directors', officers', employees', and agents' aggregate liability arising out of or related to this Agreement, whether in contract, tort, or under any other theory of liability, exceed the amounts actually paid by and due from User under the Agreement during the one year period immediately preceding the date the cause of action arose.

Section 5.2. Exclusion of Consequential and Related Damages. In no event shall AASM or its present and former affiliates, directors, officers, employees, or agents have any liability to User or any third party for any lost profits, loss of data, loss of use, costs of procurement of substitute good or services, or for any indirect, special, incidental, punitive, or consequential damages however caused and, whether in contract, tort, or under any other theory of liability whether or not AASM has been advised of the possibility of such damage. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, AASM's and its present and former subsidiaries', affiliates', directors', officers', employees', and agents' liability shall be limited to the maximum extent permitted by law.

Section 5.3. Survival. This Section 5 shall survive the expiration or earlier termination of this Services Agreement.