



Digital Chart Room Subscription Agreement

GENERAL TERMS AND CONDITIONS

The terms and conditions set forth below are an integral part of the Digital Chart Room Subscription Agreement entered into between simplifyMD and Practice as set forth in the Business Terms portion of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

Section 1. Certain Definitions

As used in this Agreement, the following definitions shall apply:

“Authorized Provider” means a physician or mid-level practitioner who is authorized by Practice to maintain Charts on the Software.

“Authorized User” means an individual employee or contractor of Practice who is authorized by Practice to utilize the Licensed Materials for Health Care Use.

“Backup Copies” shall mean copies, in whole or in part, of the Software, and of such portions of the Documentation as are provided by simplifyMD in an electronic retrieval format, made by Practice in accordance with Practice's normal computer system backup procedures for purposes of safekeeping and backup only.

“Chart” means a set of scanned images and associated data stored in the Software with respect to a given Patient.

“Confidential Information” means information that is disclosed in writing or other tangible form to one party by the other party or by a person having an obligation of confidence to such party and is designated in such writing or tangible form as confidential or proprietary (or, if disclosure is made orally or visually, is designated as confidential by the person disclosing the information or is of a nature that the recipient knew or reasonably should have known, under the circumstances, would be regarded by the owner of the information as confidential).

“Documentation” means all written documentation (whether printed or in an electronic retrieval format) supplied to Practice by simplifyMD for use with or in support of the Software or its implementation, including any and all revisions, modifications, and updates thereof as may be supplied by simplifyMD to Practice during the term of this Agreement.

“Health Care Use” means (i) with respect to the Software, Use by an Authorized User for purposes of adding, modifying, viewing, or printing a Chart or performing system administration functions provided through the Software, in accordance with the terms of this Agreement and in compliance with all applicable laws; and (ii) with respect to the Documentation, reading of a copy thereof (with or without the aid of a machine or device) by an Authorized User in connection with Health Care Use of the Software.

“Enrollment Fee” means the fee(s) described as such in the Business Terms.

“Licensed Materials” means, collectively and individually, the Software and the Documentation.

“Material Malfunction” means a material failure of the Software to perform substantially as described in the Documentation.

“Patient” means a patient of any Authorized Provider.

“Patient Access” means Use by a Patient (or by an agent authorized by Patient) pursuant to a PHR Agreement for the purpose of viewing or printing such

portion of the Patient's Chart as Practice publishes for such purpose through the Software.

"PHR Agreement" means an agreement between simplifyMD and a Patient pursuant to which simplifyMD facilitates Patient Access.

"Practice Data" means all information and data elements entered into or stored by the Software by or on behalf of Practice.

"Practice Environment" means the computer and network equipment and software and the telecommunications equipment and access (including without limitation continuous Internet access) required for Use of the Software as specified from time to time by simplifyMD.

"Print-only Use" means (i) with respect to the Software, Use by an Authorized User for the limited purpose printing a Chart, in accordance with the terms of this Agreement and in compliance with all applicable laws; and (ii) with respect to the Documentation, reading of a copy thereof (with or without the aid of a machine or device) by an Authorized User in connection with Print-only Use of the Software.

"Problem Report" means a written report delivered to simplifyMD by Practice describing a suspected Material Malfunction and identifying in reasonable detail the basis for such suspicion.

"Software" means the current (as of the Effective Date) version of the digital medical record management software system known as "Digital Chart Room," in object/executable (and/or encrypted source code) form only, and any associated database structures, interfaces, and the like, together with any and all revisions, modifications, and updates thereof as may be supplied by simplifyMD to Practice during the term of this Agreement.

"Subscription Fee" means the fees described as such in the Business Terms.

"Subscription Term" means the period for which Practice has paid Subscription Fees or, if longer, the period for which Practice is obligated to pay Subscription Fees as set forth in the Business Terms.

"Support Liaison" means one Authorized User (or more than one, if approved by simplifyMD) designated by Practice from time to time to be its representative(s) for purposes of contact with simplifyMD for support or maintenance services, provided that each such person has been appropriately trained in the operation of the Software by simplifyMD or by another Support Liaison.

"Use" means accessing the Software by means of a browser-based device connected to the Server via a network and operating the Software through such device.

Section 2. License; Capacity; Term of Agreement

A. Grant of License. Subject to the terms of this Agreement, simplifyMD hereby grants to Practice a non-exclusive, non-transferable (except as otherwise provided herein) and non-sublicensable license for (i) Health Care Use during any Subscription Term, (ii) Print-only Use during the term of this Agreement other than during a Subscription Term, and (iii) granting Patient Access to Patients who have entered into PHR Agreements with simplifyMD.

B. License Capacity. Practice may establish and maintain Charts only for the number of Authorized Providers set forth in the Business Terms, as adjusted from time to time as provided therein.

C. Term of Agreement. The term of this Agreement shall commence on the Effective Date and, unless otherwise terminated as provided herein, shall continue in perpetuity.

Section 3. Fees; Effects of Non-Payment

A. Practice shall pay the Enrollment Fee and Subscription Fees as provided in the Business Terms and shall pay all other amounts owed to simplifyMD hereunder when due.

B. Payments not received within thirty days after the due date shall accrue interest from such due date at the rate of one and one-half percent (1.5%) per month or, if less, at the highest rate permitted by applicable law.

C. IN THE EVENT A PAYMENT DUE UNDER THIS AGREEMENT IS NOT RECEIVED BY SIMPLIFYMD UPON THE DUE DATE THEREOF, SIMPLIFYMD MAY, WITHOUT PREJUDICE TO ANY OTHER REMEDIES AVAILABLE TO IT AND WITHOUT PRIOR NOTICE TO PRACTICE, AT ANY TIME THEREAFTER UNTIL SUCH PAYMENT IS RECEIVED, (I) CAUSE USE OF THE SOFTWARE TO BE LIMITED TO ENTER PRINT-ONLY USE AND (II) SUSPEND AND WITHHOLD THE PROVISION OF ANY OR ALL SUPPORT AND MAINTENANCE SERVICES DESCRIBED HEREIN. SIMPLIFYMD'S FAILURE TO EXERCISE SUCH RIGHTS SHALL NOT OPERATE AS OR BE DEEMED A WAIVER TO EXERCISE SUCH RIGHTS THEREAFTER OR ON A LATER OCCASION.

Section 4. Support and Maintenance

A. Support and Maintenance Services. If Practice has paid in full as set forth herein all Subscription Fees then due (if any) and is not otherwise in default under this Agreement, simplifyMD during the term of this Agreement shall provide to Practice the following support and maintenance services upon the terms and conditions set forth herein:

Telephone/E-mail Support. During simplifyMD's normal business hours (presently 8:00 a.m. to 8:00 p.m. prevailing Eastern time weekdays except common business holidays observed by simplifyMD), simplifyMD shall provide to the Support Liaison(s) operational support services consisting of telephone or e-mail consultation and assistance with respect to operation of the Software for its normal intended uses. Such services will be provided as promptly as is reasonably practicable on a first-in, first-out basis in response to Practice's requests for services by telephone or electronic mail at such numbers and addresses as simplifyMD shall provide to Practice from time to time. To the extent that support services requested by Practice relate to hardware, network, or other technical issues not specifically arising from the Software, or to matters of general business practices, issues, or problems not substantially related to operation of the Software, simplifyMD reserves the right, upon so advising Practice's personnel, to consider such request as a request for general consultation services to be paid for by Practice at simplifyMD's then-current rates.

Error Correction. In response to Problem Report, simplifyMD shall use reasonable efforts to attempt to correct a reported Material Malfunction or shall use reasonable efforts to attempt to provide a reasonable workaround sufficient to alleviate any material adverse effect of the problem on the utility of the Software, provided (i) Practice makes available all information, documentation, access to personnel, and testing reasonably requested by simplifyMD from time to time to assist simplifyMD in identifying and correcting the problem and (ii) simplifyMD after reasonable efforts is able to duplicate such problem on its computer system and verify that the problem is in fact in the Software and not elsewhere. Practice acknowledges that the Software is complex and probably is not error-free and that all deficiencies, if any, may not be correctable or avoidable.

Maintenance and Enhancement Releases. From time to time, simplifyMD in its sole discretion may provide to Practice releases of the Software that contain changes and/or repairs to functionality and/or enhancements to functionality and/or additional functionality. simplifyMD may cause such releases of the Software to be installed remotely to the Server without notice to Practice or simplifyMD may deliver such releases to Practice on computer media, in which case Practice will, as soon as reasonably practicable, install each such version in accordance with simplifyMD's instructions.

B. Other Products. From time to time, simplifyMD may offer enhanced versions of the Software or other software products containing functionality similar to or different from that of the Software. simplifyMD in its sole discretion will determine whether to offer any such functionality as part of the Software or as a separate product for which simplifyMD may charge an additional license fee.

Section 5. Patient Access

Recognize the importance of Patients of having online access to portions of their Charts, Practice and simplifyMD anticipate offering Patient Access to Patients on an annual subscription basis for fees to be determined by simplifyMD from time

to time, subject to the reasonable approval of such fees by Practice. SimplifyMD will facilitate Patient Access by providing a common web portal through which Patients will connect to Practice's Server, and simplifyMD will be responsible for collecting payment for such subscriptions from Patients. Patient authentication will occur on the Practice's Server, and no health or financial information of a Patient will be accessible to or requested by simplifyMD in the course of facilitating such Patient Access.

For a Patient interested in Patient Access, Practice will refer the Patient to a web site address as specified by simplifyMD. Patient Access will be facilitated by simplifyMD pursuant to a PHR Agreement in such form as simplifyMD determines in its sole discretion from time to time, including without limitation the right of simplifyMD to cease providing such service. Such PHR Agreement will be presented as a "click-through" agreement at the time of such Patient sign-up, and each Patient will be required to accept such agreement before receiving Patient Access. Practice may provide Patient with such terms and conditions of use and/or require Patient's assent to such waivers or other contractual terms as Practice deems appropriate in its sole discretion from time to time.

Within 30 days following the end of each calendar quarter, simplifyMD will remit to Practice one-half of the subscription fees received by simplifyMD for the period ending on the last day of such calendar quarter.

Section 6. Protected Status of Patient Data

Practice and simplifyMD understand and agree the Practice Data includes Protected Health Information ("PHI") and/or Non-public Protected Financial Information ("NPF"), as those terms are defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and implementing regulations (45 C.F.R. Parts 160, 162 and 164) and the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. §6801, et seq.) and implementing regulations (16 C.F.R. Part 313) ("GLBA") and are subject to stringent protections under other state and federal laws. Practice and simplifyMD each agrees to comply at all times with the provisions of such laws and regulations applicable to it.

Section 7. Practice Obligations

A. Practice Environment. Practice shall provide the Practice Environment and may be required to update its software and/or hardware to new versions of the same or similar products from time to time at Practice's expense. Practice is responsible for verifying with simplifyMD any compatibility issues prior to changing software or hardware configurations.

B. Data Security. Practice shall be solely responsible for and shall maintain, in connection with the operation of the Software, adequate technical, physical, and procedural access controls and system security requirements and devices to ensure that access to the Software is limited to duly authorized persons and to ensure Practice Data privacy, confidentiality, integrity, authorization, authentication, non-repudiation, virus detection and eradication, and other Practice Data and network security. The Software will include functionality for assignment of user identification codes and password protected access, but Practice shall be solely responsible for evaluating the adequacy of such functionality with regard to Practice Data security and privacy, and simplifyMD makes no representations or warranties regarding the same (and expressly disclaims any such representations and warranties, including without limitation any representation or warranty regarding compliance with, or conformity to standards of, any applicable laws, regulations, or requirements of any governing or accrediting body and any warranty that the Software or any equipment, system, or network on or through which the Software is Used will be free of vulnerability to intrusion or attack).

C. Patient Access. Practice shall permit Patient Access for the duration of any PHR Agreements with Patients referred to simplifyMD by Practice. Because simplifyMD anticipates entering one-year PHR Agreements with Patients that may be renewed for additional one-year terms, Practice agrees to provide simplifyMD no less than 15 months' prior written notice of termination of Patient Access so that existing PHR Agreements will not be interrupted and simplifyMD can notify Patients of non-renewal upon the anniversaries of such PHR Agreements.

D. Responsibility for Use. Recognizing that (i) the Software is an administrative support tool only and expressly is not to be relied upon by Authorized Providers or any other persons for medical advice or the provision of medical services, (ii) Patient Access is enabled solely at the discretion and to the extent determined by the Practice and is provided expressly as a convenience for Patients and expressly not for reliance by any health care provider in rendering medical advice or providing medical service to Patients, and (iii) Practice is responsible under this Agreement for providing all Practice Data utilized in the Software, Practice shall indemnify, defend, and hold harmless simplifyMD, its directors, officers, and employees from and against any loss, cost, or liability (including without limitation reasonable attorney fees and expenses) resulting from or relating to a claim of a third party with respect to Health Care Use or Patient Access or access to or use of any Practice Data, including without limitation any claim of negligence or product liability on the part of simplifyMD but specifically excluding claims arising solely from the gross negligence or intentional misconduct of simplifyMD. Practice's obligations specified in this paragraph will be conditioned on simplifyMD's notifying Practice promptly in writing of such claim or threat thereof (whether or not litigation or other proceeding has been filed or served) and giving Practice full and exclusive authority for, and information for and assistance with, the defense and settlement of such claim and any subsequent appeal.

E. Restrictions. Practice shall not do, nor shall it permit any person do, any of the following: (i) use the Software for any purpose or in any manner not specifically authorized by this Agreement; (ii) make any copies or prints, or otherwise reproduce or print, any portion of the Licensed Materials, whether in printed or electronic retrieval format, except as expressly provided in this Agreement; (iii) distribute, republish, download, display, post, or transmit any portion of the Licensed Materials except as explicitly authorized by this Agreement (by way of clarification, the production of reports generated by the Software shall not be deemed a violation of this clause); (iv) create or recreate the source code for any or all of the Software, or re-engineer, reverse engineer, decompile, disassemble, modify, or alter any or all of the Software; (v) modify, adapt, translate, or create derivative works based upon any part of the Software, or combine or merge any part of the Software with or into any other software, content, content or documentation except as may be explicitly authorized by this Agreement, provided however that Practice may create interfaces for importing Practice Data in HL-7 format from sources approved in writing by simplifyMD (but such approval shall not constitute endorsement or warranty as to the quality of such data, the import process, or the results achieved thereby); (vi) refer to or otherwise use any part of the Software as part of any effort to develop a program having any functional attributes, visual expressions, or other features similar to those of Software except as may be explicitly authorized by this Agreement; (vii) remove, erase, or tamper with any copyright, logo, name badging, or other proprietary or trademark notice printed or stamped on, affixed to, or encoded or recorded in the Software or in or on a Server, or fail to preserve all copyright and other proprietary notices in any copy of any portion of the Software made by Practice; (viii) except as otherwise may be expressly provided by this Agreement, operate sell, market, license, sublicense, distribute, rent, loan, or otherwise grant to any third party, including without limitation any hosting vendor, any right to use any portion of the Software without the express prior written consent of simplifyMD (which may be withheld by simplifyMD for any reason or conditioned upon execution by such party of a confidentiality and non-use agreement and/or other such other covenants and warranties as simplifyMD in its sole discretion deems desirable); or (ix) attempt to do or assist any party in attempting to do any of the foregoing.

F. Cooperation. Practice shall cooperate with and assist simplifyMD in performing the services described in this Agreement, including without limitation providing to simplifyMD timely access to office accommodations, facilities, and equipment; complete and accurate information and data from its officers, agents, and employees; and suitably configured computer and communications products.

Section 8. Backup and Archival Copies

A. Software: On-line Documentation. Practice may make Backup Copies of the Software and of such portions of the Documentation as are provided by

simplifyMD in an electronic retrieval format provided that no more than a reasonable and necessary number of Backup Copies may be in existence at any one time. In accordance with Practice's normal computer system archival and disaster-recovery procedures, a reasonable and necessary number of such Backup Copies (and/or the original media containing the Software and electronic format Documentation delivered to Practice by simplifyMD from time to time) may be kept in storage at one or more locations separate from a Licensed Site for purposes of safekeeping and disaster planning. Upon request from time to time, Practice shall notify simplifyMD in writing of the number of Backup Copies and of the location(s) of any off-site Backup Copies. Practice shall preserve on and/or in all Backup Copies all of simplifyMD's copyright and other restrictive and proprietary notices in the form and content as they appear on and/or in the Software and electronic format Documentation provided by simplifyMD. Practice acknowledges and agrees that all Backup Copies are and shall remain the sole and exclusive property of simplifyMD.

B. Printed Documentation. Without simplifyMD's prior written consent, Practice shall not duplicate any printed Documentation or any portion thereof provided in printed form by simplifyMD. Practice may make a reasonable number of copies of Documentation, or portions thereof, provided by simplifyMD in an electronic retrieval format as necessary for Practice's Health care Use from time to time.

C. Data. Practice shall be solely responsible for and shall maintain, in connection with the operation of the Software, adequate backup procedures and mechanisms with respect to Practice Data. The Software will include functionality for backing-up Practice Data to portable USB devices, but Practice shall be solely responsible for evaluating the adequacy of such functionality and simplifyMD makes no representations or warranties regarding the same (and expressly disclaims any such representations and warranties, including without limitation any representation or warranty regarding compliance with, or conformity to standards of, any applicable laws, regulations, or requirements of any governing or accrediting body). Any hardware suggested by simplifyMD for such purpose is suggested merely as a convenience to Practice, and simplifyMD shall not be responsible or liable in any manner whatsoever for Practice's selection or use thereof or any failure or deficiency of such hardware or of the Software used in conjunction therewith.

Section 9. Disclaimer of Warranties

SIMPLIFYMD DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF, INCLUDING IWTHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SIMPLIFYMD KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR OTHERWISE IS IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE. SIMPLIFYMD FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN PRACTICE WITH RESPECT TO THE LICENSED MATERIALS OR ANY PART THEREOF. Practice acknowledges that (i) that the operation of the Software will not be error free in all circumstances, (ii) that all defects in the Software may not be corrected, and (iii) that the operation of the Software may be interrupted for reasonable periods of time by reason of defect therein or by reason of fault on the part of SimplifyMD. .

Section 10. Ownership of Licensed Materials and Data

A. Licensed Materials. Practice acknowledges and agrees that, as between simplifyMD and Practice, simplifyMD has and retains exclusive, valid, and non-contestable ownership of the Licensed Materials and ownership of the names and marks thereof and that the foregoing constitute valuable assets and trade secrets of simplifyMD.

B. Practice Data. As between Practice and simplifyMD, any Practice Data shall be the exclusive property of Practice. All Practice Data shall be deemed to be Confidential Information.

C. Suggestions. Practice may request or recommend changes or additions to the Licensed Materials or suggest ideas for new products which simplifyMD, at its sole option, may incorporate in the Licensed Materials or in other products that may or may not be made available to Practice. Any changes or additions made by simplifyMD or ideas exploited by simplifyMD, whether or not pursuant to a contract with Practice (unless otherwise expressly provided in such contract), shall be and remain the sole property of simplifyMD and may be sold, licensed, or otherwise provided by simplifyMD to other licensees of the Licensed Materials and other third parties in simplifyMD's sole discretion without notice, attribution, or any payment of royalties to Practice. Except as otherwise agreed in writing with respect to a specific such item, Practice hereby assigns to simplifyMD any and all rights, title, and interest, including without limitation copyright and patent rights, in and to any such changes and additions to the Licensed Materials made by simplifyMD and any such ideas exploited by simplifyMD.

Section 11. Confidentiality and Non-use

A. Information Deemed Confidential. Without limiting the definition of "Confidential Information" and whether or not otherwise meeting the criteria described therein, the Licensed Materials shall be deemed conclusively to be Confidential Information and, without granting by implication any rights with respect to any particular item of Confidential Information, all trade secrets of a party also shall be deemed conclusively to be Confidential Information, including without limitation (i) any data, information, documents, flow charts, logic diagrams, design concepts, technical information, processes, standards, specifications, improvements, inventions, procedures, know-how, formulae, algorithms, source and executable codes, scripts, file layouts, test materials, or the like relating in any way to the Licensed Materials and (ii) any accounting, financial or statistical data or information, sales and marketing information, development plans, business plans, strategies, forecasts, customer lists, customer data or the like of, or possessed by, either party or any affiliate thereof and not generally known to the public.

B. Information Not Confidential. The following shall not be deemed to be Confidential Information subject to the confidentiality and non-use provisions of this Agreement: (i) information that was in a party's possession or knowledge at the time of disclosure by the other party and that was not acquired directly or indirectly from such other party as shown by documentary evidence; (ii) information described in a printed publication distributed otherwise than on an expressly confidential basis; (iii) information developed independently by or on behalf of the receiving party as shown by documentary evidence; and (iv) information disclosed to the receiving party by a third party not having an obligation of confidence of the information to the other party as shown by documentary evidence. No combination of information will be deemed to be within any of the foregoing exceptions, regardless whether the component parts of the combination are within one or more exceptions, unless the combination itself and its economic value and principles of operation are themselves so excepted.

C. Security of Confidential Information. In addition to any other restrictions or obligations imposed at law or provided under this Agreement, each party possessing Confidential Information of the other party will maintain all such Confidential Information under secure conditions, using reasonable security measures and in any event not less than the same security procedures used by such party for the protection of its own Confidential Information of a similar kind.

D. Non-Disclosure Obligation. Except as otherwise may be permitted by this Agreement, neither party shall disclose any Confidential Information of the other party to any third party without the express prior written consent of the other party; provided, however, that either party may disclose appropriate portions of Confidential Information of the other party to those of its personnel who have a substantial need to know the specific information in question in connection with such party's exercise of rights or performance of obligations under this Agreement

so long as all such personnel have been instructed that such Confidential Information is subject to the obligation of confidence set forth by this Agreement.

E. Compelled Disclosure. If either party is ordered by a court, administrative agency, or other governmental body of competent jurisdiction to disclose Confidential Information, or if it is served with or otherwise becomes aware of a motion or similar request that such an order be issued, then such party will not be liable to the other party for disclosure of Confidential Information required by such order if the such party complies with the following requirements: (i) if an already-issued order calls for immediate disclosure, then such party immediately shall move for or otherwise request a stay of such order to permit the other party to respond as set forth in this paragraph; (ii) such party immediately shall notify the other party of the motion or order by the most expeditious possible means; and (iii) such party shall join or agree to (and in any case shall not oppose) a motion or similar request by the other party for an order protecting the confidentiality of the Confidential Information, including joining or agreeing to (and in any case not opposing) a motion for leave to intervene by the other party.

F. Non-Use Obligation. Except as expressly authorized in this Agreement, during the term of this Agreement and forever thereafter (or for such shorter period as may be imposed by applicable law), neither party shall use any Confidential Information of the other party, except for the benefit of such other party, without the express prior written consent of the other party.

G. Copying of Confidential Information. Except as otherwise may be permitted by this Agreement, neither party shall copy, duplicate, reverse engineer, reverse compile, disassemble, record, or otherwise reproduce any part of any Confidential Information of the other party, nor attempt to do any of the foregoing, without the prior written consent of the other party. Any tangible embodiments of Confidential Information of a party that may be generated by the other party, either pursuant to or in violation of this Agreement, will be deemed to be the sole property of the first party and fully subject to the obligations of confidence set forth herein.

H. Proprietary Legends. Without the other party's prior written consent, neither party shall remove, obscure, or deface on or from any tangible embodiment of any Confidential Information any proprietary legend relating to the other party's rights.

I. Reports of Misappropriation. Each party immediately shall report to the other party any attempt by any person of which such party has knowledge or becomes aware (i) to use, disclose or copy Confidential Information without authorization from the other party or (ii) to copy, reverse assemble, reverse compile or otherwise reverse engineer any part of the Software.

J. Post-Termination Procedures. Immediately upon any termination of this Agreement or other termination of a party's right to possess and/or use Confidential Information, each party shall turn over to the other party (or destroy and certify the same in writing, if agreed in writing by the other party) any disks, tapes, documentation, drawings, notes, memoranda, specifications, devices, documents, or any other tangible embodiments of any Confidential Information of the other party, including without limitation all copies of the Licensed Materials remaining in the possession of Practice or any person acquiring such copy through Practice.

Section 12. Risk Allocation; Limitation of Liability

A. EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. OTHER THAN FOR INFRINGEMENT OF SIMPLIFYMD'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING WITHOUT LIMITATION ANY USE OF THE LICENSED MATERIALS BEYOND THE SCOPE OF THE LICENSE GRANTED HEREIN), NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF OR DAMAGE TO DATA, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE), WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, SHOULD HAVE ANTICIPATED, OR IN FACT

KNEW OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL SIMPLIFYMD BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY ANYONE. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.

B. MAXIMUM AGGREGATE LIABILITY. IN NO EVENT SHALL SIMPLIFYMD'S AGGREGATE LIABILITY TO PRACTICE (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY PRACTICE), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE FEES PAID HEREUNDER TO SIMPLIFYMD DURING THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THE PROVISIONS OF THIS PARAGRAPH ARE INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT.

C. INFRINGEMENT. In the event of a third-party claim that any Licensed Materials infringe the intellectual property or proprietary rights of such party, or in simplifyMD's opinion such a claim is likely to occur, Practice shall permit simplifyMD, at its option and expense, either to: (i) procure for Practice the right to continue using the Licensed Materials; (ii) replace or modify the same so that it becomes non-infringing, or (iii) immediately terminate both parties' respective rights and obligations under this Agreement with regard to the Licensed Materials, in which case Practice will return the same to simplifyMD and the simplifyMD will refund to Practice all fees paid by Practice under this Agreement for the period beginning one year prior to the date of such termination. In no event shall simplifyMD be liable for, and Practice will indemnify simplifyMD against, any claim arising from: (i) the combination, operation, or use of any Licensed Materials with equipment (other than the Server), devices, or software not supplied by simplifyMD; (ii) alteration or modification of any Licensed Materials; (iii) simplifyMD's compliance with Practice's designs, specifications, or instructions; or (iv) Practice's use of the Licensed Materials after simplifyMD has informed Practice of modifications or changes in the Licensed Materials or the Practice Environment required to avoid such claims if such claim would have been avoided by implementation of simplifyMD's recommended modifications or changes.

D. INTENTIONAL RISK ALLOCATION. Each party acknowledges that the provisions of this Agreement were negotiated, as a material part of the agreement memorialized herein, to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions involved with this Agreement. The warranty disclaimers and limitations in this Agreement are intended, and have as their essential purpose, to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended, and have as their essential purpose, to limit the forms of relief available to the parties.

Section 13. Breach; Termination

A. Notice of Breach; Cure Period. In the event of a breach of any provision of this Agreement, the notice and cure procedures set forth in this paragraph shall apply. The non-breaching party shall give the breaching party notice describing the breach and stating the time, as provided herein, within which the breach must be cured. If a provision of this Agreement sets forth a cure period for the breach in question, then that provision shall take precedence over any cure period set forth in this paragraph. No cure period shall be required, except as may be provided otherwise in this Agreement, if this Agreement sets forth specific deadline dates for the obligation allegedly breached. If the breach is (i) of an obligation to pay money or (ii) a non-willful breach of an obligation of Practice relating to simplifyMD's Confidential Information, then the breaching party shall have five business days to cure the breach after the effective date of written notice thereof by the non-breaching party. If the breach is a willful breach of an obligation of Practice relating to simplifyMD's Confidential Information, then simplifyMD, in its sole discretion, may specify in the notice of breach that no cure period will be permitted. If the breach is

other than a breach of the kind described above in this paragraph, then the cure period will be thirty (30) days after the effective date of notice of the breach by the non-breaching party.

B. Termination. If a breach of any provision of this Agreement has not been cured at the end of the applicable cure period, if any (or upon such breach if no cure period is permitted), then the non-breaching party thereupon may terminate this Agreement by notice to the other party; provided, however, that simplifyMD shall not terminate this Agreement solely on the basis of non-payment of Subscription Fees by Practice. This Agreement and the license granted herein shall terminate automatically, to the extent permitted by applicable law in the jurisdiction or jurisdictions in question, if Practice is or becomes insolvent, makes an assignment for the benefit of its creditors, files a petition in bankruptcy, receivership, reorganization, or other like proceeding under any present or future debtor relief law (or is the subject of an involuntary such petition or filing that is not dismissed within sixty (60) days after the effective filing date thereof), or admits of a general inability to pay its debts as they become due.

Section 14. Taxes

Practice shall pay when due all taxes or levies based on or in any way measured by this Agreement or Practice's use of the Licensed Materials or any portion thereof, or any services related thereto, excluding taxes based on the simplifyMD's net income, but including without limitation sales and use taxes and personal property taxes, if any, regardless whether any such tax or levy is assessed against Practice or simplifyMD. If Practice challenges the applicability of any such tax or levy, it shall pay such amount to simplifyMD, which shall pay the same to the appropriate taxing authority, or Practice shall pay such tax or levy to the appropriate taxing authority, in either of the foregoing cases not later than five days prior to the date such tax or levy would become delinquent; Practice thereafter may challenge such tax and seek refund thereof from the taxing authority.

Section 15. Escalation and Dispute Resolution Procedure

Except with respect to a claim that Practice has violated its covenants in this Agreement relating to simplifyMD's Confidential Information, for which simplifyMD may seek injunctive relief as provided herein, any controversy, dispute, or disagreement arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the procedure set forth in this paragraph. SimplifyMD and Practice shall attempt in good faith to resolve any such matter promptly by negotiation between executives who have authority to settle the same. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this paragraph will be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the matter has not been resolved by these persons within 45 days of the disputing party's notice, the matter shall be submitted to a single arbitrator for arbitration in Nashville, Tennessee, pursuant to the then-current rules and procedures of the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration. The award of the arbitrator shall be binding and conclusive upon the parties, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The arbitrator is not empowered to award damages in excess of compensatory damages subject to the limitations provided herein, and SimplifyMD and Practice each hereby irrevocably waives any right to recover such damages with respect to any dispute resolved in accordance with this paragraph. Each party to the arbitration shall bear its own costs; the cost of the arbitrator shall be split by the parties.

Section 16. Other Provisions

A. Survival. The covenants herein concerning Confidential Information shall survive indefinitely following any termination or expiration of this Agreement, and the indemnification obligations herein shall survive for five years following any termination or expiration of this Agreement.

B. Assignment. Practice may transfer or assign some or all of its rights and/or delegate some or all of its obligations under this Agreement only with the express prior written consent of simplifyMD, which may be granted or withheld in simplifyMD's sole discretion; provided, however, Practice may assign all of its rights hereunder indivisibly to any wholly-owned subsidiary of Practice or to Practice's parent entity or to any wholly-owned subsidiary of such parent entity, or to a purchaser of substantially all of Practice's assets, so long as such assignee agrees in writing to comply with Practice's obligations under, and to be bound by, this Agreement (this clause does not in itself authorize Practice to delegate its duties under this Agreement). Any purported transfer or assignment by Practice of any right under this Agreement otherwise than in accordance with the provisions of this paragraph shall be null and void and a breach of this Agreement. This Agreement shall be fully assignable by simplifyMD.

C. Entire Agreement. Except as may be expressly provided otherwise herein, this Agreement constitutes the entire agreement between the parties concerning the subject matter thereof. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect. Each party represents and warrants that, in entering into and performing its obligations under this Agreement, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other party with respect to the subject matter hereof, nor on any course of dealing or custom and usage in the trade, except as such promise, inducement, or representation may be expressly set forth herein.

D. Amendment and Waiver. No modification or amendment to this Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound thereby. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.

E. Severability. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then (i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected; (ii) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable would be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling, and/or the controlling principle of law or equity leading to the ruling, subsequently is overruled, modified, or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

F. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the state of Delaware (other than its conflicts of law provisions).

G. Headings. The headings of the sections used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.

H. Notice. Except as otherwise expressly provided herein, required notices under this Agreement shall be deemed delivered (i) when personally delivered, (ii) on the second business day after deposit when sent by certified or registered mail, or (iv) on the next business day when sent with next-business-day instruction by recognized overnight document delivery service. Such notices shall be sent to simplifyMD at **ATTN: CEO, 1031 Cambridge Square 12-D, Alpharetta, Georgia 30004**, with copy to Stephen F. Wood, Jr., Esq., 211 Commerce Street, Suite 1000, Nashville, Tennessee 37201, and to Practice at the address set forth in the

Business Terms. Either party may change its address for purposes of notice by written notice thereof to the other party.

I. Force Majeure. Except with respect to any payment obligations, neither party shall be liable for any failure to perform its obligations under this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control of such party, including without limitation acts of God, acts of terrorists or criminals, acts of domestic or foreign governments, change in any law or regulation, fires, floods, explosions, epidemics, disruptions in communications, power, or other utilities, strikes or other labor problems, riots, or unavailability of supplies.

J. Attorneys Fees. If litigation or other action is commenced between the parties concerning any dispute arising out of or relating to this Agreement, the prevailing party in any contested ancillary proceeding relating to the action (for example, motions to transfer, to compel discovery, etc.) and the prevailing party in the action itself will be entitled, in addition to any other award that may be made, to recover all court costs and other official costs and all reasonable expenses associated with the ancillary proceeding or the action, including without limitation reasonable attorneys fees and expenses.

K. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns permitted by this Agreement.

L. Injunctive Relief. Recognizing the unusual nature of computer software and trade secrets, Practice acknowledges that any violation by Practice of its covenants in this Agreement relating to simplifyMD's Confidential Information, including without limitation the Software, would result in damage to simplifyMD that is largely intangible but nonetheless real and that is incapable of complete remedy by an award of damages. Accordingly, any such violation shall give simplifyMD the right to a court-ordered injunction or other appropriate order to enforce specifically those covenants. Practice agrees to pay simplifyMD any reasonable expenses, including without limitation attorney fees and expenses, incurred in obtaining such specific enforcement (in addition to any other relief to which simplifyMD may be entitled).

M. Counterparts. This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument.
