

Now Medical User Agreement

This Now Medical User Agreement (“Agreement”) contains the terms and conditions that apply to the use by you (“User” or “You”), and the Practices and Practice Members (defined below) that you represent, of the Services (as defined in Section 1.a) offered by Now Medical, Inc. (“Now Medical”), including but not limited to at <https://www.NowMedical.com> and all affiliated websites and applications and any Software (as defined in Section 2.a) owned and operated by Now Medical (collectively, the “Now Medical Site”), as well as on its partners’ websites, digital platforms and applications (“Partner Sites”). As used in this Agreement, “Practice” shall mean the entity on behalf of which User has engaged Now Medical to provide the Services, and shall include the totality of all facilities, doctors, dentists, and other healthcare specialists, professionals or providers, and staff members (each a “Practice Member”) located in the same office or affiliate offices, provided such affiliates are part of a single affiliated covered entity (as such terms are defined within HIPAA) or an organized health care arrangement or “OHCA” (as such term is defined within HIPAA), for whom an account is created on the Now Medical Site by User or who otherwise use the Services and/or the Now Medical Site for the purpose set forth in this Agreement. In those instances, in which the Practice does not have a separate corporate parent entering into this Agreement on the Practice’s behalf as User, references to User herein shall also be construed to mean Practice and references to Practice herein shall be construed to mean User. This Agreement hereby incorporates by reference any User account page accessible by User through the Services (the “User Account Page”) or other order form entered into by the parties (the User Account Page and any other order forms entered into by the parties shall collectively be referred to as the “Order Form”) and any addenda entered into by the parties, as if the terms of such Order Form or addenda, as applicable, were stated herein.

BY SIGNING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR OTHERWISE AGREEING TO THESE TERMS, YOU HEREBY REPRESENT AND WARRANT THAT YOU ARE DULY AUTHORIZED TO ENTER INTO AND BIND USER AND PRACTICE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND ACKNOWLEDGE AND AGREE THAT ALL SUCH USE BY USER IS SUBJECT TO SUCH TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THESE TERMS OR ARE NOT AUTHORIZED TO BIND USER AND PRACTICE, THEN DO NOT SIGN THE ORDER FORM AND USER AND PRACTICE ARE NOT LICENSED OR PERMITTED TO USE THE SERVICES AND/OR THE NOW MEDICAL SITE. ALL OTHER USES OF THE SERVICES AND/OR THE NOW MEDICAL SITE ARE STRICTLY PROHIBITED.

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION AGREEMENT IN SECTION 16.f, BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU, PRACTICE AND NOW MEDICAL WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

1. Now Medical Services.

- a. Services. Subject to the terms and conditions of this Agreement and payment of the fees set forth in Section 6 and any Order Form or addendum to this Agreement (if applicable), Now Medical will provide a variety of services via the Now Medical Site and Partner Sites ("Services"), which may include, but are not limited to: (i) hosting Practice and Practice Member profile web pages, and marketing Practice

Members and their services on the Now Medical Site (collectively, the “Marketing Services”); (ii) health care appointment scheduling services, integration to User’s practice management system, and appointment reminders for Non-Now Medical Patients (defined below in Section 5) (collectively, the “Scheduling Technology Services”); (iii) staff training, and account relations services; and (iv) billing, collection and payment services (collectively, the “Payment Services”).

- b. User Access. During the Term, and subject to the terms and conditions of this Agreement, Now Medical grants User the right to access and use the Services and/or the Now Medical Site and to permit its Practice Members, agents and subcontractors the right to access and use the Services and/or the Now Medical Site solely on User’s behalf; provided, however, that User shall be responsible for any use of the Services and/or the Now Medical Site by such Practice Members, agents and subcontractors. During the Term and subject to the terms and conditions of this Agreement, User grants Now Medical the right to access and use User’s practice management system, calendar system and patient database (“User’s Systems”), and to copy, extract and use all data necessary to provide the Services. User acknowledges and agrees that Now Medical shall not be subject to any terms not set forth herein with respect to User’s Systems, including, but not limited to, any click-through agreements Now Medical may be required to

accept in connection with its use thereof. User will furnish to Now Medical such cooperation, technical assistance, resources, and support as reasonably necessary or appropriate for Now Medical to implement and perform the Services.

- c. User Information. User acknowledges and agrees that, in order to provide certain of the Services, Now Medical shall, and shall authorize its partners to, make certain Practice information available to Now Medical's end users who have consented to Now Medical's terms of use (by clicking through the terms of use or using the Now Medical Site or end-user-facing aspects of the Services) ("Customers"), including, without limitation: (i) the address, phone number, fax and email of the Practice and Practice Members; (ii) information regarding Practice Member appointment availability and National Provider Identifier ("NPI"); (iii) insurance plans in which each Practice Member participates (i.e., with which each is "in-network"); (iv) general Practice information; and (v) trademarks, logos and such other domains, images and materials that User provides to Now Medical ("User Logos") (collectively, "User Information"). Now Medical and its partners may use, modify, display, and reproduce User Information in connection with providing and marketing the Services and the Now Medical Site. User may request that Now Medical modify User Information with additional information, links or services. Now Medical may incorporate such modifications and additional

information into User's profile posted on the Now Medical Site in Now Medical's sole discretion.

- d. Accounts. Each Practice Member shall create and maintain throughout the Term accounts and passwords ("Accounts") to use the Services and/or the Now Medical Site, including uploading, reviewing, and updating User Information via the Now Medical Site. Account information shall be held in strict confidence by User and Practice Members and User will be solely responsible for any disclosures of its Account information or use thereof by any unauthorized party. User shall immediately notify Now Medical at service@Now_Medical.com: (i) following any unauthorized use, access or other compromise of an Account (including any password); and (ii) when a Practice Member leaves, is no longer employed or otherwise ceases to be part of any Practice. Now Medical reserves the right to disable any Account upon its reasonable belief that the security with respect to that Account has been or likely will be compromised.
- e. Reviews. Now Medical solicits feedback from Customers who use the Now Medical Site regarding the Practice and/or Practice Members ("Reviews"), and Now Medical may, in its sole discretion, make these Reviews available through posting on the Now Medical Site and/or Partner Sites in accordance with the terms of use governing such websites. While Now Medical may from time to time and in its sole discretion remove Reviews (for example, for violation

of Now Medical's policies), Now Medical shall have no obligation to (i) review Reviews for veracity, accuracy or content, or (ii) remove any Reviews. Now Medical shall have no liability to User with respect to, and User hereby releases Now Medical from, all claims related to, arising from or in connection with Reviews, including without limitation claims that a Review is defamatory, libelous, false, misleading, unfair, deceptive, and/or disparaging. The foregoing release is made by User notwithstanding the provisions of California Civil Code Section 1542 (or any other statute or common law principle elsewhere with a similar effect as to the subject matter of the foregoing sentence) which provides: **“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”** User expressly waives any and all rights it may have under the provisions of California Civil Code Section 1542 or any similar statute in any other jurisdiction. Information provided by or about Customers or associated with Customers that is contained in or part of Reviews is Customer Personal Information (as defined in Section 1.h) but is not PHI (as defined in Section 14.e) and is collected solely at the discretion of Now Medical and not on behalf of User. User represents and warrants that it will not attempt to unduly influence or fraudulently create Reviews of its

Practice Members or other providers on the Now Medical Site.

- f. User Sourced Reviews. If applicable, Now Medical may also display through the Services certain reviews of Practice Members submitted by Non-Now Medical Patients (defined below in Section 5) directly to User or an agent of User (“User Sourced Reviews”). The parties agree and acknowledge that User Sourced Reviews may not conform to the standard form of reviews Now Medical customarily obtains from Customers, and accordingly, the parties agree to work in good faith to conform User Sourced Reviews to Now Medical’s standard form for publication through the Services. User agrees and acknowledges that Now Medical may, in its sole discretion, not publish or remove from display through the Services any User Sourced Review to the extent it violates Now Medical’s then-current policies or is in violation of applicable laws.
- g. Customer Personal Information. Now Medical will maintain Customer consent for the use and disclosure of a Customer’s health care or medical history, and other personal information (collectively, “Customer Personal Information”) in connection with the Services, whether in paper or electronic form. For the avoidance of doubt, Customer Personal Information is information that Customers provide directly to Now Medical so that Now Medical can provide services to Customers, and does not include information obtained from or on behalf of User, the Practice or any Practice

Member. Customer Personal Information includes, without limitation, information that Customers provide directly to Now Medical (i) creating an account, (ii) searching for healthcare providers, (iii) completing medical history forms, (iv) leaving reviews of Practice Members, or (v) utilizing Embedded Modules (defined below). User acknowledges and agrees that Customer Personal Information is not PHI (as defined in Section 14.e).

- h. Content. Now Medical shall develop, compile, modify or otherwise maintain all content on the Now Medical Site or as part of the Services, including, without limitation, any Practice Member or Practice photographs, and any content provided by User or any Customers. User acknowledges and agrees that Now Medical may: (i) make content from the Now Medical Site, including User Information, available on Partner Sites and through marketing initiatives; and (ii) use Practice Member's name and/or NPI to obtain certain insurance information including, without limitation, coverage and benefit information. User shall obtain any necessary permission or consent from each Practice and Practice Member as may be required to share the User Information with Now Medical and for Now Medical to further use and disclose such information as described herein.

2. Software.

- a. Acceptance. You may choose to review, download or otherwise utilize certain software applications or other code and functionality from the Now Medical Site or

otherwise provided by Now Medical (“Software”). As a condition to using the Software, you must review and agree to the terms of this Section 2 and certain other terms and conditions that may apply (collectively, the “Software Terms”). You are not required to agree to the Software Terms. However, if you reject the Software Terms, you do not have any right to use the Software. If you use the Software, you will be deemed to have accepted the Software Terms. The term “Software” includes Embedded Modules, as defined below.

b. Definitions.

- i. “Embedded Module” means html and other code and functionality provided by Now Medical that is displayed on a User Website (defined below) and that allows End Users to access and view Now Medical Content on the User Website. Embedded Modules include, without limitation, the “Book Online Button,” “white labels,” and other widgets and functionality that Now Medical may provide for use on a User Website from time to time.
- ii. “End User” means a visitor to the User Website.
- iii. “User Website” means the User URL(s), domain(s) or other web properties accessing or hosting an Embedded Module.

- iv. “Now Medical Content” means all data, information and content provided or otherwise made available by or on behalf of Now Medical through or in connection with the Services and the Now Medical Site. Now Medical Content includes the Now Medical Marks, links and search functionality leading to the Now Medical Site, and advertising for Now Medical or for third party products. In addition, Now Medical Content includes any and all data and html and other code that accompanies the Embedded Module, and any upgrades, enhancements or modifications to such code.
- v. “Now Medical Marks” means the Now Medical name and any trade name, trademark, service mark, or logo of Now Medical.

c. Licenses.

- i. Software. subject to the terms and conditions of this Agreement and during the Term hereof, Now Medical hereby grants User a limited, non-exclusive, non-sublicensable, non-transferable and revocable right and license to use the Software for its internal business purposes and solely in connection with the relevant Services. Now Medical

reserves all rights to the Software not expressly granted hereunder.

- ii. Embedded Modules. Subject to the terms and conditions of this Agreement and during the Term hereof, Now Medical hereby grants to User a limited, non-exclusive, non-sublicensable, non-transferable, and revocable license to (i) embed the html and other code provided by Now Medical hereunder on the User Website in order to display the Embedded Modules on the User Website; and (ii) use the Embedded Modules on the User Website solely for the intended purposes to access and display certain Now Medical Content made available by Now Medical via the Embedded Modules to End Users. Upon Now Medical's request, User agrees to immediately remove any Embedded Modules from the User Website. Except as expressly described herein, User is not licensed to use the Embedded Modules for any other purpose and nothing in this Agreement shall be deemed to grant User any other right, title or interest in the Embedded Modules.
- iii. Now Medical Marks. Subject to the terms and conditions of this Agreement, User may display Now Medical Marks on the

User Website in connection with the presentation of the Embedded Module and Now Medical Content; provided that all goodwill related to such name and logo and all uses thereof and any accrued goodwill shall inure solely to the benefit of Now Medical. If Now Medical determines in its sole discretion that any use of Now Medical Marks may be detrimental to Now Medical or its business or otherwise objectionable (in Now Medical's sole discretion), then User will promptly cease such use or modify its use to be consistent with Now Medical's reasonable requests. Upon any termination of this Agreement, User will immediately cease all use of Now Medical Marks, and any other similar mark, name or logo.

- d. User Website Terms. User hereby agrees that User will provide the Embedded Modules and Now Medical Content to End Users subject to the same terms and conditions that End Users are subject to with respect to User's own products or services on the User Website ("End User Terms"). User acknowledges and agrees that (i) each End User affirmatively accepts the End User Terms in connection with such End User's use of the User Website; and (ii) such End User Terms include at least the following: (x) all legally required, and otherwise

appropriate disclaimers related to the Embedded Modules and Now Medical Content and its use, and (y) provisions regarding User's collection and processing of End Users' personal information in compliance with all applicable laws and regulations and consistent with this Agreement. Further, End Users shall be required to accept Now Medical's Terms of Use and Privacy Policy if such End Users elect to use Now Medical's services or access the Now Medical Site.

e. Proprietary Rights and Restrictions.

i. Feedback. User may choose to provide Now Medical with comments concerning the Services or the Now Medical Site and User's use thereof, which may include bug reports, evaluations, proposed product integrations (and associated metrics and learnings) (collectively, "Feedback"). User hereby assigns to Now Medical all rights, title, and interest to the Feedback, for any and all commercial and non-commercial purposes, with no obligation of any kind to User.

ii. Restrictions. Except as expressly authorized under this Agreement, User may not (i) copy, rent, lease, sell, lease, license, transfer, assign, sublicense, redistribute, disassemble, aggregate, index, reverse engineer or decompile, derive source code or algorithms from,

modify or alter, interfere with, defeat, avoid, disrupt, bypass, remove, disrupt or disable any part of the Now Medical Site; (ii) circumvent or attempt to circumvent any restrictions on, access to, or use of the Now Medical Site, or any of their constituent components; (iii) introduce any virus, worm, trap door, back door, timer, time bomb, authorization codes, or other device that would access, modify, interfere or disrupt the use of the Now Medical Site; (iv) use the Now Medical Site for any unlawful purpose, including to phish, spam, or distribute malware; (v) otherwise use the Now Medical Site on behalf of any third party or on any websites other than the User Website, or to create or maintain a separate online scheduling platform, or other similar product or service; (vi) resell, disclose, publish or distribute the Now Medical Site, including any information created, received, processed or provided through the Services or the Now Medical Site; (vii) use the Now Medical Site in any manner or for any purpose that violates any law or regulation, any right of any person, including but not limited to intellectual property rights, rights of privacy, or rights of publicity; (viii) cache

or store any content obtained via use of the Now Medical Site; or (ix) remove or alter any branding, identifying, or notices included with the Software (including, but not limited to, “Powered by Now Medical” or other Now Medical Marks).

- f. Placement. Now Medical prohibits the placement of the Software or Now Medical Content on User Websites that include content that is offensive, abusive, harassing, threatening, discriminatory, vulgar, pornographic, or otherwise inappropriate, as determined by Now Medical in its sole discretion. User may not display the Embedded Modules or Now Medical Content in a manner that does not permit successful linking or redirection to the Now Medical Website or delivery of the applicable Services to the End User. Partner may not insert any intermediate page, splash page or other content between the Embedded Modules and the Now Medical Website.

3. Telemedicine Enabling Services.

- a. Telemedicine Encounters. Subject to the terms and conditions of this Agreement, Now Medical may provide services that will enable Customers to access health care encounters with Practice Members via telemedicine technology (“Telemedicine Encounters”), which may be conducted through either (i) the Practice’s existing telemedicine capabilities, or (ii) an interactive, two-way audio-visual communications system that Now Medical will facilitate through its Software.

- b. Telemedicine Marketing and Scheduling and Telemedicine Facilitation Services. Now Medical's services shall be limited to Marketing and Scheduling Services for Telemedicine Encounters ("Telemedicine Marketing and Scheduling Services"), and under no circumstances shall Now Medical be deemed to be the provider of Telemedicine Encounters. Now Medical's services may also include the technological facilitation of Telemedicine Encounters between Practice Members and Customers via an interactive, two-way audiovisual communications system (the "Telemedicine Facilitation Services"). The Telemedicine Marketing and Scheduling Services, and if applicable, the Telemedicine Facilitation Services, are included in the definition of "Services" hereunder.
- c. Telemedicine Facilitation Software. Now Medical may, in its sole discretion, choose to provide Telemedicine Facilitation Services using its own telemedicine technology or by partnering with a third-party technology provider. In either case, the Telemedicine Facilitation Services are included in the definition of "Software" under the Agreement, and are, accordingly, subject to the same terms and conditions that apply to other Software hereunder.
- d. Telemedicine Representations and Warranties. User represents, warrants, and covenants that, at all times during the Term:

- i. Each Practice Member who engages in Telemedicine Encounters possesses all valid, unexpired, unrevoked and unrestricted licenses, authorizations, and certifications (collectively, the “Licenses”) as may be required to engage in Telemedicine Encounters. Such Licenses include, but are not limited to (i) a license to practice medicine in the jurisdiction where the Customer is located, unless the Practice Member qualifies for an applicable exemption, and (ii) any Licenses that are required for Telemedicine Encounters within a certain sub-specialty of medicine;
- ii. Telemedicine Encounters will be provided by Practice Members in a manner that complies with all applicable state and federal laws and regulations, including, but not limited to, those that relate to (i) Practice Members’ scope of practice, (ii) remote prescribing, (iii) permitted modalities of telemedicine, (iii) privacy and security, and (iv) coding, billing and collection activities;
- iii. Practices shall obtain informed consent from Customers prior to engaging in Telemedicine Encounters, and such informed consent will comply with all applicable laws and regulations that may

apply to health care services delivered via telemedicine;

- iv. User shall be responsible for assessing insurance coverage and billing requirements that apply to Telemedicine Encounters (including any such requirements that arise under state or federal law), and for providing Now Medical with accurate and up-to-date information regarding each Practice Member's insurance participation as applicable to Telemedicine Encounters; and
- v. User shall be responsible for establishing policies and procedures that shall be operationalized in the event that a Customer requires emergency health care services during a Telemedicine Encounter.

4. User Responsibilities.

- a. User Information. User will cooperate with Now Medical or its agents to verify the information specified in Section 8.b, User Information, and any other information that Now Medical in its sole discretion deems necessary to confirm Practice Members' professional qualifications. User will promptly update and notify Now Medical, in accordance with Section 8.b, of any change in User Information, including Practice Member licensure

status and any applicable disciplinary action involving the Practice Member. User is solely responsible for any liability or expense resulting from outdated or inaccurate User Information. User agrees that Now Medical may, in its sole discretion, modify the processes and criteria it uses to evaluate Practice Members' qualifications, including with respect to any specialty listing, and may reject a Practice Member from being included in the Services for failure to meet Now Medical's eligibility standards, in Now Medical's sole discretion.

- b. Acceptance of Customers. User's acceptance of an appointment scheduling request from Now Medical for a Customer constitutes, for the purposes of this Agreement, User's acceptance of such Customer as a patient. User is fully and solely responsible for all care rendered to Customer, and for collecting payment from Customer for all services rendered. Now Medical will have no responsibility for collection (subject to Now Medical's obligations for Payment Services, as applicable) or any liability whatsoever for fees for services due to User that are unpaid by Customer.
- c. Incorrect User Information. User agrees that any Customer who makes an appointment with User based on out-of-date or incorrect User Information shall not be charged for any fees disputed or not otherwise covered by the Customer's insurance provider as a result of User's failure to provide accurate User Information.

- d. Scheduling Requests. User will respond to Customer scheduling requests within a reasonable amount of time, but in no event more than twenty-four (24) hours after receipt of Now Medical's request for an appointment on behalf of a Customer. User acknowledges and agrees that repeated rescheduling or cancelling of Customer appointments may result in User or the relevant Practice Member(s) being removed from, or otherwise affected in the order of display of, appointment listings available to Customers, in Now Medical's sole discretion.
- e. Confirmation of Customer Personal Information. If a Customer submits Customer Personal Information on the Now Medical Site and authorizes User to have access to such information in advance of an appointment, at the Customer's appointment User will (i) provide Customer with a copy of such Customer Personal Information, and (ii) give Customer an opportunity to review and accept or revise such Customer Personal Information. User hereby acknowledges, agrees, releases, and indemnifies Now Medical from all claims and liability arising out of, related to, or in connection with User's failure to have Customer accept the Customer Personal Information or arising out of, related to, or in connection with any omissions or errors in any Customer Personal Information provided through the Services. User has no rights in the Customer Personal Information maintained by Now Medical other than as expressly provided hereunder. If Now Medical becomes aware

that a User is using any Customer Personal Information obtained through the Services and/or the Now Medical Site in a manner that is inconsistent with the terms of this Agreement, Now Medical's terms of use or privacy policy, or applicable law, Now Medical may, without limiting any of its other remedies available at law or in equity, request that User immediately cease such inconsistent use and/or immediately terminate such User's rights with respect to the Services and/or the Now Medical Site. Now Medical may, but has no obligation to, delete any content that Now Medical, in its sole discretion, deems inappropriate for inclusion on the Now Medical Site.

- f. Contact. User agrees that Now Medical may contact any Practice Member regarding the Services, the Software, and/or the Now Medical Site. If User has opted out of receiving any email or facsimile communications from Now Medical then, as a condition of receiving the Services hereunder, User expressly opts back in to receiving such email and facsimile communications and hereby withdraws its opt out.

5. Non-Now Medical Patients.

User may elect to use certain Services for patients who are not Customers ("Non-Now Medical Patients"), including without limitation, booking appointments for, or having appointment reminders sent to, Non-Now Medical Patients. User shall be responsible for obtaining any required consents, permissions or authorizations from Non-Now Medical Patients for the use and

provision of such Services, including disclosure to and use by Now Medical of the healthcare and personal information of any Non-Now Medical Patients consistent with the terms of this Agreement and applicable law. Now Medical may send information, including but not limited to information regarding Now Medical, the Services and/or certain resources, to Non-Now Medical Patients.

6. Fees and Payments.

- a. Services Fees. In consideration of the Services provided hereunder, User shall pay Now Medical any initial set up or recurring fees specified on User's account page on the Now Medical Site ("User Account Page") or elsewhere in the applicable Order Form. Prices shown on the Order Form do not include any taxes that may apply. User agrees to pay any sales and other taxes that may apply (excluding taxes based on Now Medical's income) unless User provides Now Medical with a valid signed tax exemption certificate applicable to the Services and the Practices. Now Medical may invoice User for the first payment in advance at the time of sign up, in advance for each subsequent license period, or as otherwise specified in the Order Form, as applicable. All invoices provided by Now Medical hereunder are due immediately, and Now Medical may charge User's credit card, bank account, or other form of payment, on a recurring basis, in advance of the period of service, or in arrears, as applicable. User agrees to these recurring charges.
- b. Other Fees. In addition to those fees set forth in Section 6.a, User shall pay Now Medical the fees set

forth in any addendum or Order Form entered into by the parties.

- c. Amounts Past Due and Fee Changes. All amounts due and owing hereunder by User that are not paid by the due date shall bear interest at the rate of the lesser of one and one half percent (1.5%) per month or the maximum amount permissible by law. Except as otherwise may be agreed in an applicable Order Form, Now Medical reserves the right to change from time to time the amount or structure of the fees for any of the Services (including any part of the Marketing and Scheduling Technology Services or the Payment Services). Now Medical will use reasonable efforts to notify User of any such fee changes at least thirty (30) days prior to becoming effective, provided that notification by email or on the User Account Page shall be sufficient. If User does not wish to pay such revised fees, then User's sole option shall be to terminate this Agreement by notifying Now Medical in writing prior to the revised fees becoming effective. If User does not notify Now Medical in writing prior to the revised fees becoming effective, then User will be deemed to have accepted such fee changes and such revised fee amounts will be automatically incorporated into this Agreement by this reference.
- d. Termination. Upon termination of this Agreement for any reason, User shall pay to Now Medical all fees due or accrued under this Agreement and any addendum or Order Form entered into by the parties as of the date of such termination. Notwithstanding

anything to the contrary in this Agreement or in any addendum, Now Medical shall not refund to User any fees paid prior to expiration or termination of this Agreement.

- e. Participation; Services. Now Medical will not exclude as a participant in the Services any individual or entity who meets the qualifications for participation as set forth herein. The parties agree that any User payments for the applicable Marketing and Scheduling Technology Services are (i) consistent with fair market value in an arm's length transaction, (ii) not based on the value or volume of any items or services provided by User to Customers or Non-Now Medical Patients, and (iii) do not constitute splitting of any professional fees paid to User. The Services impose no requirements on the manner in which User provides services to Customers, except that User agrees not to charge any Customers different rates based upon, nor to charge Customers a fee for, such Customers booking through the Now Medical Site or otherwise using Now Medical services.

7. Limitation of Liability for Use.

- a. Disclaimer. The parties acknowledge and agree that Now Medical is not responsible for: (i) the accuracy, reliability, timeliness, or completeness of User Information, PHI, Benefit Information (defined below), Customer Personal Information, other data provided by Customers, or any other data or information provided or received through the Services and/or the Now Medical Site; (ii) any results that may

be obtained from the use of the Services and/or the Now Medical Site; (iii) the provision of User's services as a result of User's reliance on any Customer Personal Information or other data provided through the Services and/or the Now Medical Site; (iv) the cancelling or rescheduling of any appointment booked through the Services and/or the Now Medical Site; (v) use of the Software after the Term; or (vi) losses or injury arising from User's failure to implement and maintain the safeguards set forth in Section 8.a.ii, or arising from a security incident not caused by Now Medical.

- b. Health Care. User acknowledges and agrees that Now Medical is not a health care provider, licensed or otherwise. Now Medical cannot and will not assume responsibility for the direct care of any patient, which shall at all times remain the responsibility of User, Practice(s) and Practice Members. Now Medical will not be responsible for the assignment of staff to treat Customers, other patients, or any other activity that involves the practice of medicine.
- c. Benefit Information. User may receive certain insurance-related information (including without limitation coverage and benefit information) of Customers ("Benefit Information") through the Services. User's receipt of Benefit Information is subject to the terms and conditions in this Section 7.c. User agrees and acknowledges that: (i) User is aware that the Benefit Information is obtained via a clearing house and/or from the applicable insurance provider

or Customer; (ii) Now Medical cannot confirm the accuracy of the data it receives from such clearing house and/or insurance provider or Customer; (iii) NOW MEDICAL MAKES NO GUARANTEES AND DISCLAIMS ALL WARRANTIES THAT SUCH BENEFIT INFORMATION IS ACCURATE, TIMELY, COMPLETE OR ERROR-FREE; and (iv) User is ultimately responsible for verifying all Benefit Information with the applicable insurance carrier and Customer.

8. Representations, Warranties and Covenants of User.

- a. Confidentiality. User represents, warrants and covenants that: (i) it will maintain the confidentiality of Customer Personal Information and shall only use Customer Personal Information or the healthcare and personal information of other patients as permitted in this Agreement and consistent with state and federal laws, including applicable privacy and data security laws; and (ii) it will implement and maintain reasonable and appropriate administrative, organizational, physical, and technical safeguards to protect the confidentiality, integrity and availability of Customer Personal Information, Account information, and Now Medical Confidential Information, and to prevent such information from improper use and disclosure.
- b. Practice Member Information. User represents, warrants and covenants that at all times during the Term: (i) User will provide Now Medical with complete and accurate information about Practice

Members' specialties (in accordance with and subject to Now Medical's then-current guidelines on specialty listings), practice or hospital affiliations, association memberships, board certifications, insurance participation, and contact information (including Practice Members' professional address and phone and fax numbers); (ii) User will provide Now Medical accurate and up-to-date information regarding each Practice Member's appointment availability; (iii) each Practice Member possesses valid, unexpired, unrevoked and unrestricted licenses, authorizations and certifications: (A) for all jurisdictions in which he or she practices (free of any disciplinary actions by state medical boards or other applicable regulatory bodies), (B) necessary to provide all services or treatment provided by User or a Practice Member to a Customer or Non-Now Medical Patient resulting from User's or a Practice Member's use of the Services and/or the Now Medical Site (and User shall confirm the same to Now Medical on at least an annual basis), and (C) necessary for Now Medical to display User's and Practice Members' specialties; (iv) each Practice Member has entered into a valid and unexpired collaborative practice or other agreements to the extent required for such Practice Member to practice at the applicable Practices (including such agreements to the extent the same is a condition of such Practice Member's license); (v) each Practice Member is a member in good standing on the medical staff of any hospitals in which he or she practices with appropriate

clinical privileges (if applicable), and is employed by or affiliated with User; (vi) each Practice Member possesses valid and unrestricted state and federal narcotic and controlled substances registrations, as applicable; (vii) each Practice Member is and remains a participating provider in the Medicare and Medicaid programs (Titles XVIII and XIX of the Social Security Act, respectively) or is qualified to participate therein, but in any event is not excluded therefrom; (viii) User will obtain and maintain, and ensure that each Practice Member obtains and maintains, professional liability insurance coverage and other insurance of the types and in the amounts that are at a minimum consistent with industry standards and applicable law, with respect to each Practice Member's practice; (ix) each Practice Member treats all patients presenting themselves for treatment without regard to such patients' race, religion, gender, sexual orientation, disability, payer source or other unlawful considerations; (x) the healthcare provider primarily providing services for an appointment shall be the Practice Member with whom such appointment is booked; (xi) User will use, and ensure that each Practice Member uses, the Services and the Now Medical Site in compliance with all applicable laws and regulations, including, without limitation, the hospital conditions of participation, the patient freedom of choice laws and principles, and antitrust, competition, advertising, marketing and consumer protection laws and

regulations; (xii) User has the right to enter into and subject the Practice and each Practice Member to the terms and conditions of this Agreement; (xiii) User has obtained from each Practice Member all right, title and interest necessary for Now Medical to provide the Services to User on behalf of such Practice Member; and (xiv) each Practice Member shall comply with the then-current Now Medical Community Standards available at <https://www.NowMedical.com/about/communitystandards/> or any successor location (“Community Standards”). User represents, warrants and covenants that it will notify Now Medical within five (5) days of any additional information applicable to User’s or a Practice Member’s practice, any changes with respect to any information provided to Now Medical, or if at any point User or a Practice Member is no longer in compliance with any of the warranties, representations, or covenants in this Section 8.b, except that: (A) User will have fifteen (15) days to notify Now Medical with respect to any additional information applicable to User’s or a Practice Member’s practice or changes of the information provided by User pursuant to Section 8.b.i, and (B) User will notify Now Medical within a reasonable amount of time, but in no event more than one (1) hour after any changes with respect to the information provided by User pursuant to Section 8.b.ii. User shall be liable for any failure by Practice Members to meet the foregoing requirements of this Section 8.b.

- c. Competition. User acknowledges, represents, warrants and covenants that it will not, and will ensure that each Practice Member will not engage or participate in any act or omission involving the use of the Services: (i) to establish, attempt to establish, or enforce, directly or indirectly, any agreement or coordination of (A) the prices charged for any product or service; (B) the kinds, frequencies or amounts of any product or service offered; or (C) the customer or customer categories for any product or service; or otherwise engage or attempt to engage in price fixing, output restriction, or customer or market allocation; or (ii) to engage in any anti-competitive, deceptive or unfair act, omission or practice, or to otherwise violate applicable antitrust, competition or consumer protection laws or regulations. For the avoidance of doubt, the foregoing shall apply to User, including each Practice Member, notwithstanding that such User or any such Practice Member has not elected to use the Payment Services.
- d. Discount Reporting. User acknowledges, represents, warrants and covenants that it shall disclose to each applicable payor, to the extent required by applicable law or contract, the net amount User paid for the applicable Marketing and Scheduling Technology Services hereunder (i.e., net of any applicable discounts, rebates, or other price concessions).
- e. Ownership Rights. User represents, warrants and covenants that it has all necessary right, title and interest in and to the content submitted by User to

Now Medical in order for Now Medical to perform the Services, including any and all rights and interests in or to User Information and any copyright, trademark, other intellectual property, publicity, and privacy (including necessary consents, authorizations and/or other legal permissions).

- f. User Sourced Reviews. User represents and warrants that (a) it has obtained all rights, titles, interests, consents and authorizations necessary in accordance with applicable law for Now Medical to publish User Sourced Reviews through the Services, (b) each User Sourced Review is unbiased and no remuneration has been or will be provided to the applicable Non-Now Medical Patient for his or her review, and (c) each User Sourced Review has been provided to User or its agent by a Non-Now Medical Patient of User in connection with services actually provided (or that ought to have been provided, as the case may be) by the Practice Member associated with the applicable User Sourced Review.

9. **Indemnification.**

User will defend, indemnify and hold harmless Now Medical and its affiliates, directors, officers, employees, consultants and agents from any and all claims, actions, proceedings, losses, damages, liabilities and expenses, including reasonable attorneys' fees and amounts awarded by a court or paid in settlement, arising from or related to: (i) any services or treatment provided by User or a Practice Member to a Customer or other patient resulting from User's or a Practice Member's use of the Services and/or the Now Medical Site; (ii) any fees, costs or expenses in connection with

any services or treatment provided by User or a Practice Member to a Customer or other patient resulting from User's or a Practice Member's use of the Services and/or the Now Medical Site; (iii) use of the Services by, or provision of the Services to, Non-Now Medical Patients; (iv) gross negligence, willful or intentional misconduct, or fraud by a User, Practice, or Practice Member; (v) any breach of Sections 2.e, 3.d, 4.e, 8 or 10.a.ii; (vi) User Sourced Reviews; or (vii) User Information.

10. Other Representations and Warranties; Disclaimer of Warranties.

a. Mutual Warranties. Each party represents and warrants to the other party that: (i) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized; (ii) it has the full power to enter into this Agreement and to perform its obligations hereunder; (iii) the execution and delivery of this Agreement will not result in any breach of any terms and conditions of, or constitute a default under, any other agreement to which such party is bound; and (iv) it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any basis for the filing of an involuntary petition.

b. No Other Warranties. EXCEPT AS EXPRESSLY STATED HEREIN, THE SERVICES, SOFTWARE AND THE NOW MEDICAL SITE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE

MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOW MEDICAL HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, AND ALL WARRANTIES OF THE SERVICES, SOFTWARE OR THE NOW MEDICAL SITE BEING BUG-FREE, ERROR-FREE OR FREE FROM DEFECTS.

11. **Limitation of Liability.**

- a. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL NOW MEDICAL OR ITS PARTNERS, SUPPLIERS, VENDORS OR LICENSORS BE LIABLE TO USER, THE PRACTICE OR A PRACTICE MEMBER FOR ANY (i) LOSS OF PROFITS, LOST REVENUE, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, (ii) LOSS OF DATA, (iii) LOSS OR INTERRUPTION OF USE OF THE SERVICES, SOFTWARE, NOW MEDICAL SITE, OR PARTNER SITES, (iv) PROVISION OF SERVICES, HEALTH CARE OR OTHERWISE, TO

CUSTOMERS OR NON-NOW MEDICAL PATIENTS, OR (v) USER SOURCED REVIEWS, WHETHER IN AN ACTION IN CONTRACT, TORT OR BASED ON A WARRANTY, EVEN IF NOW MEDICAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- b. Limitation. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE MAXIMUM AGGREGATE LIABILITY OF NOW MEDICAL OR ITS PARTNERS, VENDORS, SUPPLIERS OR LICENSORS FOR ANY LOSS OR DAMAGES (WHETHER BASED IN CONTRACT, TORT OR ANY OTHER FORM OF ACTION) (A) RELATING TO OR ARISING OUT OF THIS AGREEMENT, OR (B) RELATING TO OR ARISING OUT OF ANY OTHER AGREEMENT BETWEEN, ON THE ONE HAND, USER, THE PRACTICE OR A PRACTICE MEMBER, AND, ON THE OTHER HAND, NOW MEDICAL OR ANY THIRD-PARTY THAT IS A PARTNER, VENDOR, SUPPLIER, LICENSOR OR LICENSEE OF NOW MEDICAL, EXCEED THE GREATER OF: (Y) THE AGGREGATE OF THE AMOUNT OF FEES ACTUALLY PAID BY USER TO NOW MEDICAL HEREUNDER DURING THE PREVIOUS TWELVE (12)-MONTH PERIOD, OR (Z) ONE HUNDRED DOLLARS (\$100).

12. **Marks; Non-Disparagement.**

- a. Now Medical Marks. Any use of a Now Medical Mark by User that is not expressly permitted

hereunder will, in each case, be subject to the prior written approval of Now Medical. In addition, any such use of a Now Medical Mark will be subject to Now Medical's then-current trademark usage guidelines. Now Medical reserves the right to terminate User's right to use any Now Medical Mark immediately upon the issuance of written notice if Now Medical determines User to be in violation of such guidelines in its sole discretion. User acknowledges and agrees that it shall not (i) make any comparative references to Now Medical, its pricing, or the Services or Now Medical Site; or (ii) disparage or otherwise denigrate Now Medical or the Services or Now Medical Site.

- b. User Logos. User hereby grants Now Medical a non-exclusive, royalty-free license to use User Logos in connection with the Services during the Term.

13. **Intellectual Property.**

All right, title and interest, including without limitation all intellectual property rights, in and to the Services, Software and the Now Medical Site, including all content submitted by Customers or User thereto (other than User Logos), as well as all URLs and domains registered by Now Medical (even if such URLs and domains incorporate User Logos), shall remain the valuable and exclusive property of Now Medical. Now Medical retains all proprietary rights, title, and interest, including, without limitation, all patents, copyrights, trademarks, service marks, trade dress, rights to the look and feel of the Now Medical Site, and trade secrets in and to any inventions, data, information, know-how, logos, ideas, concepts, technology, software and documentation

related to or resulting from the utilization of the Services and/or the Now Medical Site.

14. **Confidentiality/HIPAA Compliance.**

- a. Confidential Information. As used herein, “Confidential Information” means all confidential and proprietary information of a party (“Disclosing Party”) disclosed to the other party (“Receiving Party”) that: (i) if disclosed orally is designated as confidential at the time of disclosure; (ii) if disclosed in writing is marked as “Confidential” and/or “Proprietary”; or (iii) reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, without limitation, the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the provision of the Services and/or the Now Medical Site, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include PHI (which is governed by Section 14.e) or any information that: (1) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (2) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (3) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (4) is received from a third party

without breach of any obligation owed to the Disclosing Party.

- b. Non-Disclosure. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Notwithstanding the foregoing, the Receiving Party may disclose such Confidential Information to those of its employees and contractors who need to know such information for purposes of performing the Receiving Party's obligations under this Agreement, provided that the Receiving Party certifies that such employees and contractors have agreed, either as a condition of employment or in order to obtain such Confidential Information, to be bound by terms and conditions substantially similar to those in this Agreement. The Receiving Party shall use the same degree of care to protect the Confidential Information of the Disclosing Party as it uses to protect its own information of a confidential and proprietary nature, but in no event less than a reasonable degree of care.
- c. Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's request and cost, if the Disclosing Party wishes to contest the disclosure.

- d. Injunctive Relief. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality obligations hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.
- e. HIPAA. In the event that Now Medical creates, receives, maintains, or transmits Protected Health Information (or “PHI”, as such term is defined by HIPAA) from or on behalf of User or the Practice (as applicable) in order to perform the Services (“Practice PHI”), the parties agree and acknowledge that Now Medical is serving as a “Business Associate”, as such term is defined in the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recover and Reinvestment Act of 2009 (the “HITECH Act”), and as set forth in their respective implementing regulations (collectively, “HIPAA”), of the Practice (and of User, if it is a Covered Entity component or Business Associate, of the Practice). The Practice, Now Medical, and User (if it is a Covered Entity component or Business Associate of the Practice) agree to discharge their respective duties hereunder in accordance with the applicable provisions of HIPAA. In furtherance of the foregoing, the terms of the

Business Associate Agreement set forth in Exhibit A of this Agreement are incorporated herein by reference.

15. **Term; Termination.**

- a. Term. This Agreement will commence as of the date of User's acceptance of the terms and conditions herein, whether by clicking on the "Accept" button or by downloading, accessing or otherwise using the Services and/or the Now Medical Site, and shall continue in effect for a period set forth in the Order Form or, if no period is set forth in the Order Form, for a period of one (1) year (as applicable, the "Initial Term"). **This Agreement will automatically renew for successive periods of the same length as the Initial Term unless either party notifies the other party in writing at least thirty (30) days prior to the end of the Initial Term, or any renewal period, of its election not to renew this Agreement.** The Initial Term and all renewal periods are collectively referred to herein as the "Term."
- b. Termination. User or Now Medical may terminate this Agreement if the other party breaches a material term of this Agreement and fails to cure such breach within ten (10) days of receiving notice.
- c. Suspension. Now Medical may immediately suspend or terminate this Agreement, with regard to User and/or any Practice Member, in the event that Now Medical believes in its sole good faith determination that a Practice Member has engaged in inappropriate or unprofessional conduct, failed to fulfill the

requirements set forth in Section 8.b, or otherwise breached any provision of this Agreement. Now Medical further reserves the right, at its sole discretion, to terminate this Agreement immediately, with regard to User and/or any Practice Member, for User's or a Practice Member's repeated rescheduling or cancelling of appointments.

- d. Survival. The following shall survive expiration or termination of this Agreement: Sections 2.e.i, 2.e.ii, 6, 7, 9 – 16, and all other terms which by their nature are reasonably intended to survive.

16. **Miscellaneous.**

- a. Assignment. Neither party may assign this Agreement, and/or any of its rights and obligations hereunder, without the prior written consent of the other party, except that Now Medical has the unrestricted right to assign this Agreement to an affiliate or in the event of a sale, merger or acquisition of any portion of its business to which this Agreement relates. Any attempted transfer in violation of this Section 16.a will be void and of no effect. This Agreement will be binding upon, and inure to the benefit of, the successors, representatives, and permitted assigns of the parties.
- b. No Inducement. Nothing contained in this Agreement, including any compensation paid or payable, is intended or shall be construed: (i) to require, influence, or otherwise induce or solicit a party or any of its affiliates for referrals or arranging for the referrals of persons for items or services, or

recommending the ordering of any items or services, of any kind whatsoever, to any of the other parties or their affiliates, or to any other person; (ii) as splitting of any professional fees paid to User; (iii) to interfere with a patient's right to choose his or her own health care provider, or with a provider's judgment regarding the ordering of any items or health care services; or (iv) as remuneration in exchange for a disclosure of PHI or other information from a Customer or otherwise.

- c. Non-Competition. User acknowledges and agrees that the use and disclosure of Now Medical's Confidential Information would inevitably occur if User utilizes any services by any competitor of Now Medical during the Term. Accordingly, User agrees that during the Term, User shall not, and shall not agree to, purchase, use, or perform any services for any third party that develops, promotes, sells, licenses, distributes, or provides services, or has plans to do any of the foregoing, that would compete directly with the Marketing Services and Scheduling Technology Services being marketed, sold, licensed, distributed, provided or otherwise made available by Now Medical on the Now Medical Site; provided, however, that the foregoing restrictions shall not limit User's right to offer or provide an appointment scheduling service directly via the User Website owned and operated by or on behalf of User.
- d. Notices. All notices or other communications required or permitted to be given or delivered under this

Agreement shall be in writing (unless otherwise specifically provided herein) and shall be sufficiently given if sent (i) to Now Medical by overnight guaranteed delivery service and addressed to 568 Broadway, 9th Fl, New York, NY 10012, Attn: Legal; or (ii) to User via email to the designated billing contact or address on file. User expressly consents to the provision of notices via email. Either party may update its preferred notice address at any time upon notice to the other party. Any such notice or other communication shall be deemed to be given as of the date it is delivered to the recipient or, if delivered on a non-business day, on the next business day.

- e. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without reference to the conflict of laws provisions thereof.
- f. Arbitration Agreement. User and Now Medical acknowledge and agree that for the purposes of any dispute arising out of or relating to the subject matter of this Agreement, Now Medical's officers, directors, employees and independent contractors ("Personnel") are third-party beneficiaries of this Agreement, and that upon User's acceptance of this Agreement, Personnel will have the right (and will be deemed to have accepted the right) to enforce this Agreement against User as the third-party beneficiary hereof.
 - i. Arbitration Rules; Applicability of Arbitration Agreement. The parties shall use their best efforts to settle any dispute,

claim, question, or disagreement arising out of or relating to the subject matter of this Agreement directly through good-faith negotiations, which shall be a precondition to either party initiating arbitration. If such negotiations do not resolve the dispute, it shall be finally settled by binding arbitration in New York, New York. The arbitration will proceed in the English language, in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the “Rules”) then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes. The arbitrator shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction.

- ii. Costs of Arbitration. The Rules will govern payment of all arbitration fees. Now Medical will pay all arbitration fees (not including User’s attorneys’ fees) for claims less than seventy-five thousand dollars (\$75,000). Now Medical will not seek its attorneys’ fees and costs in

arbitration unless the arbitrator determines that User's claim is frivolous.

iii. Small Claims Court; Infringement. Either User or Now Medical may assert claims, if they qualify, in small claims court in New York, New York or any United States county where User lives or works. Furthermore, notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction, to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

iv. Waiver of Jury Trial. USER AND NOW MEDICAL WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. User and Now Medical are instead choosing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited

review by a court. In any litigation between User and Now Medical over whether to vacate or enforce an arbitration award, USER AND NOW MEDICAL WAIVE ALL RIGHTS TO A JURY TRIAL and elect instead to have the dispute be resolved by a judge.

- v. Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS. CLAIMS OF MORE THAN ONE USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER USER.
- vi. Arbitration Severability. If the prohibition against class actions and other claims brought on behalf of third parties, or any other part of this Section 16.f is found to be unenforceable, then all of the other language in this Agreement and this Section 16.f will remain enforceable. To the extent that User or Now Medical are permitted to bring a claim relating to this Agreement in state or federal court, then

such claim shall only be brought in courts located in New York, New York.

- g. Force Majeure. Except for a party's payment obligations, the performance of either party under this Agreement may be suspended to the extent and for the period of time that such party is prevented or delayed from fulfilling its obligations due to causes beyond its reasonable control (including, without limitation, acts of God, acts of civil or military authority, new legislation or regulatory requirements, strikes or other labor disturbances, fires, floods, epidemics or pandemics, wars or riots). After thirty (30) cumulative days of suspension on the part of one party, the other party may, at its sole discretion and with written notice to the affected party, terminate its obligations without further liability.
- h. Modifications. No modification, amendment or waiver of this Agreement or any of its provisions shall be binding upon Now Medical unless made in writing and agreed to by Now Medical. Now Medical may amend the terms and conditions of this Agreement by posting a notice on the User Account Page or otherwise reasonably notifying User at least thirty (30) days prior to such change taking effect, provided that if User does not agree to such changes, User may terminate this Agreement without penalty by providing Now Medical with written notice of such election prior to such modification taking effect. User's continued use of the Services and/or the Now Medical Site following such period shall be deemed

to be User's acceptance of such change. A failure or delay of either party to: (i) insist upon the performance of any terms, conditions, rights or privileges of this Agreement; or (ii) exercise any rights or privileges conferred in this Agreement, shall not be construed as waiving any such terms, conditions, rights or privileges and the same shall continue and remain in full force and effect.

- i. Severability. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.
- j. Entire Agreement. This Agreement, any exhibits or addenda hereto, the policies referred to herein, and any Order Form, constitute the entire agreement between the parties and supersede all previous or contemporaneous agreements, promises, representations, whether written or oral, between the parties with respect to the subject matter hereof.
- k. Headings. The headings of the sections of this Agreement are for convenience only, and do not form a part hereof or in any way limit, define, describe, modify, interpret or construe the meaning, scope or intent of this Agreement or any terms or conditions therein.

1. Independent Contractors. The relationship of the parties shall be that of independent contractors. Any employee, servant, subcontractor or agent of Now Medical who is assigned to provide services under this Agreement shall remain at all times under the exclusive direction and control of Now Medical and shall not be deemed to be an employee, servant, subcontractor or agent of User. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, or to represent the other party as agent, employee, or in any other capacity, except as specifically provided herein.
- m. Third Party Beneficiaries. This Agreement is entered into solely between, and made for the sole benefit of, Now Medical and User, and, subject to indemnification obligations and the limitations of liability herein, this Agreement will not be deemed to create any obligations, remedies or liabilities of a party to any third parties (including without limitation any Practice Member) unless explicitly stated herein. Except as otherwise stated in this Agreement, no third party shall have the right to make any claim or assert any right under this Agreement, and no third party shall be deemed a beneficiary of this Agreement.
- n. Remedies Cumulative. Unless expressly stated, no remedy afforded to a party under this Agreement shall preclude other remedies available under equity or law.

1. Definitions.

Terms used in this Exhibit A but not otherwise defined in this Exhibit A or the Agreement shall have the meaning ascribed to them by HIPAA. For purposes of this Exhibit A only, when Now Medical is deemed to be a Business Associate of Practice and/or User, as applicable, Now Medical shall be referred to as “Business Associate,” and Practice and/or User, as applicable, shall be referred to as “Covered Entity.” In the event that User is a Business Associate of the Practice, references to Business Associate herein shall be to Now Medical, notwithstanding that Now Medical would be a Business Associate Subcontractor, as defined in HIPAA, of User. In the event of an inconsistency between this Exhibit A and another term of the Agreement as it relates to PHI, this Exhibit A shall control.

2. Use and Disclosure.

Business Associate agrees not to use or disclose Practice PHI other than as permitted or required by this Exhibit A, the Agreement or as Required By Law. Business Associate shall comply with the provisions of this Exhibit A relating to privacy and security of PHI and that are applicable to Business Associates.

3. Appropriate Safeguards.

Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Practice PHI other than as provided for by this Exhibit A, the Agreement or as Required By Law. Without limiting the generality of the foregoing sentence, Business Associate will:

- a. Implement administrative, organizational, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health

Information contained within Practice PHI (“Electronic Practice PHI”) as required by the Security Rule; and comply with the applicable requirements, policies, procedures and documentation requirements of the Security Rule.

- b. Report to Covered Entity any Security Incident involving Electronic Practice PHI or involving systems in which Electronic Practice PHI is stored, maintained, or over which it is transmitted, of which Business Associate becomes aware. Any actual, successful Security Incident will be reported to Covered Entity in writing without unreasonable delay. With respect to attempted, unsuccessful Security Incidents, the parties acknowledge and agree that this Exhibit A constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. “Unsuccessful Security Incidents” means, without limitation, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use, disclosure, modification or destruction of Electronic Practice PHI or interference with system operations in an information system that contains Electronic Practice PHI.
- c. Notify Covered Entity following the discovery of a Breach of Unsecured PHI that is Practice PHI in

accordance with 45 C.F.R. § 164.410 without unreasonable delay and in no event later than sixty (60) days (or within any shorter deadline imposed by applicable state law) after discovery of the Breach. The notice shall include the following information if known (or can be reasonably obtained) by Business Associate: (i) contact information for the individuals who were or who may have been impacted by the Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the Breach, including the date of the Breach and date of discovery; (iii) a description of the types of Unsecured PHI involved in the Breach (e.g., names, social security numbers, dates of birth, addresses, account numbers of any type, and similar information); and (iv) a brief description of what the Business Associate has done or is doing to investigate the Breach and mitigate harm to the individuals impacted by the Breach. A Breach is considered “discovered” as of the first day on which the Breach is known, or reasonably should have been known, to Business Associate or any employee, officer or agent of Business Associate, other than the individual committing the Breach.

- d. Report, without unreasonable delay, to Covered Entity any access, use or disclosure of Practice PHI by Business Associate or a third party to which Business Associate disclosed Practice PHI which is not permitted by this Agreement and of which Business Associate becomes aware.

- e. Comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations, to the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164.

4. Mitigation.

Business Associate agrees to take reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Practice PHI by Business Associate in violation of the requirements of this Exhibit A (including, without limitation, any Security Incident or Breach of Unsecured PHI). Business Associate agrees to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this Exhibit A and/or any Security Incident or Breach. Business Associate shall also reasonably cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, a regulatory body or any third party required to be made under HIPAA or any other federal or state laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.

5. Minimum Necessary.

To the extent required by the "minimum necessary" requirements of HIPAA, Business Associate shall only request, use and disclose the minimum amount of Practice PHI necessary to accomplish the purpose of the request, use or disclosure. See corresponding Covered Entity obligation in Section 12.b of this Exhibit A.

6. Subcontractors.

Business Associate 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 Practice PHI on behalf of Business Associate. Business Associate 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 or conditions that apply to Business Associate through this Exhibit A with respect to such information.

7. Access to Designated Record Sets.

The parties do not expect that Business Associate will maintain Designated Record Sets. In the event, however, that Covered Entity requests and Business Associate agrees to maintain a Designated Record Set, Business Associate agrees to provide access, within thirty (30) days of a request by Covered Entity, and in the manner designated by the Covered Entity, to Practice PHI in a Designated Record Set created or received by Business Associate solely on behalf of Covered Entity only, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements of the HIPAA Regulations. If an Individual makes a request for access to Practice PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request. Covered Entity shall have the sole responsibility to make decisions regarding whether to approve a request for access to Practice PHI.

8. Amendments to Designated Record Sets.

The parties do not expect that Business Associate will maintain Designated Record Sets. In the event however, that Covered Entity requests and Business Associate agrees to maintain a Designated Record Set, Business Associate agrees to provide information to

Covered Entity for amendment and to incorporate any such amendment(s) to Practice PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the HIPAA Regulations within thirty (30) days of a request by Covered Entity, and in the manner designated by the Covered Entity. If an Individual makes a request for an amendment to Practice PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request. Covered Entity will have the sole responsibility to make decisions regarding whether to approve a request for an amendment to Practice PHI.

9. Access to Books and Records.

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

10. Accountings.

Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA. Business Associate agrees to, within thirty (30) days of request from Covered Entity, make available to Covered Entity such information as is in Business Associate's possession and as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Practice PHI in accordance with HIPAA. If Business Associate receives a request for an accounting for Practice PHI directly from an Individual,

Business Associate shall forward such request to Covered Entity within ten (10) business days. Covered Entity shall have the sole responsibility to provide an accounting of such disclosures to an Individual.

11. **Permitted Uses and Disclosures by Business Associate.**

- a. Services. Except as otherwise limited in this Exhibit A, Business Associate may use or disclose PHI to perform the Services, provided that such use or disclosure would not violate HIPAA if done by Covered Entity.
- b. Use for Administration of Business Associate. Except as otherwise limited in this Exhibit A, Business Associate may use Covered Entity's PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Covered Entity acknowledges and agrees that proper management and administration of Business Associate includes, without limitation, modifications of, upgrades to, and the development and/or addition of additional features and functionality for, the Services and the Now Medical Site.
- c. Disclosure for Administration of Business Associate. Except as otherwise limited in this Exhibit A, Business Associate may disclose Practice PHI for the proper management and administration of the Business Associate, provided that (i) disclosures are Required By Law, or (ii) Business Associate obtains reasonable written assurances from the third party to whom the information is disclosed that the third party

will (1) protect the confidentiality of Practice PHI, (2) use or further disclose the Practice PHI only as Required By Law or for the purpose for which it was disclosed to the third party, and (3) notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- d. Data Aggregation. Business Associate may use Practice PHI to provide Data Aggregation services relating to the Health Care Operations of Covered Entity if required or permitted under this Exhibit A or the Agreement.
- e. De-Identified Information. Business Associate may use Practice PHI to create de-identified health information in accordance with the HIPAA de-identification requirements. Business Associate may use or disclose de-identified health information for any purpose permitted by law.
- f. Authorization. Business Associate may present Customers with a valid HIPAA Authorization to obtain Customers' authorizations for Business Associate to be able to use and disclose Practice PHI for the purposes set forth in the Authorization. If a Customer has signed a valid HIPAA Authorization for Business Associate to retain such individual's Practice PHI and use and disclose such PHI for the purposes set forth in the Authorization, then, notwithstanding anything in Section 15 of this Exhibit A, the parties agree that Business Associate will have

no obligation to return or destroy such PHI upon the termination of the Agreement.

12. **Obligations of Covered Entity.**

- a. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Covered Entity's PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
- b. Minimum Necessary PHI. Consistent with Business Associate's mutual obligation in Section 5 of this Exhibit A, when Covered Entity discloses PHI to Business Associate, Covered Entity shall provide the minimum amount of PHI necessary for the accomplishment of Business Associate's purpose.
- c. Permissions; Restrictions. Covered Entity warrants and covenants 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 Business Associate. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Covered Entity's PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI. Covered Entity shall not agree to any restriction on the use or disclosure of PHI under 45 C.F.R. § 164.522 that restricts Business Associate's use or disclosure of Covered Entity's PHI under this Exhibit A or the Agreement unless Business Associate grants its written consent.

d. Notice of Privacy Practices. Except as required by HIPAA or other applicable law, with Business Associate's consent or as set forth in the Agreement, Covered Entity shall not include any limitation in the Covered Entity's notice of privacy practices that limits Business Associate's use or disclosure of Covered Entity's PHI under this Exhibit A or the Agreement.

13. **Compliance with HIPAA Transaction Standards.**

When providing Services, and to the extent applicable, Business Associate shall comply with all applicable HIPAA standards and requirements (including, without limitation, those specified in 45 C.F.R. Part 162) with respect to the transmission of health information in electronic form in connection with any transaction for which the Secretary has adopted a standard under HIPAA ("Covered Transactions"). Business Associate will make its services and/or products compliant with HIPAA's standards and requirements no less than thirty (30) days prior to the applicable compliance dates under HIPAA. Business Associate represents that it is aware of all current HIPAA standards and requirements regarding Covered Transactions, and Business Associate shall comply with any modifications to HIPAA standards and requirements which become effective from time to time. Business Associate shall require all of its agents and subcontractors (if any) who assist Business Associate in providing its services and/or products to comply with the terms of this Section 13.

14. **Termination Upon Breach.**

Notwithstanding anything to the contrary in this Exhibit A or in the Agreement, either party (the "Non-Breaching Party"), upon knowledge of a material breach of this Exhibit A relating to

Practice PHI by the other party (the “Breaching Party”), shall provide an opportunity for the Breaching Party to cure the breach or end the violation. If Breaching Party does not cure the breach or end the violation to the reasonable satisfaction of the Non-Breaching Party within thirty (30) days, the Non-Breaching Party may terminate: (a) this Exhibit A; (b) all of the provisions of the Agreement that involve the use or disclosure of Practice PHI; and (c) such other provisions, if any, of the Agreement as the Non-Breaching Party designates in its sole discretion.

15. **Effect of Termination.**

- a. Return of PHI. Except as provided in Section 15.b of this Exhibit A, upon termination of this Exhibit A or the Agreement, for any reason, Business Associate shall return or destroy, without unreasonable delay, all Practice PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Practice PHI that is in the possession of subcontractors or agents of Business Associate.
- b. Infeasibility. In the event that Business Associate determines in its sole reasonable discretion that returning or destroying the Practice PHI is infeasible, Business Associate shall extend the protections of this Exhibit A to such PHI and limit further uses and disclosures of Practice PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains Practice PHI. Without limiting the generality of the foregoing, Covered Entity acknowledges and agrees that: (i) it is infeasible for Business Associate to delete Practice

PHI from its backup tapes or other backup systems; and (ii) it is infeasible for Business Associate to delete all Practice PHI during an ongoing investigation in connection with a Security Incident or Breach of Unsecured PHI, and that temporarily retaining certain Practice PHI may be necessary for such investigation.