



MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into and between AcuityMD, Inc. with a place of business at 75 Federal St, Suite 800, Boston MA 02110 ("Company"), and the Customer listed in an applicable Order Form referencing this Agreement ("Customer") (each, a "Party" and collectively, the "Parties"). There shall be no force or effect to any additional, contrary or different terms of any related purchase order or similar form of Customer even if signed by the Parties. The effective date of this Agreement is the effective date of the applicable Order Form referencing this Agreement ("Effective Date").

By entering into an Order Form with Company that references these terms, Customer is agreeing to and accepting the terms of this Agreement.

Notwithstanding the foregoing, if there is a written agreement between Company and Customer that addresses the subject matter covered by these terms, then such agreement shall govern rather than these terms.

1. SERVICES AND SUPPORT

1.1 "Company Data" means any data, content, information, materials, or outputs made available or provided by Company to Customer in connection with Customer's access to or use of the Services, including but not limited to proprietary datasets, reports, analytics, software outputs, and any other information generated or supplied by Company through the Services, excluding any data or information independently provided by or originating from Customer.

1.2 "Professional Services" means those professional services purchased by Customer under a statement of work ("Statement of Work").

1.3 "Services" collectively means (i) the platform services and any applicable underlying functionality, features, or means of access made available or enabled by Company for access and use by the Customer as described in, and purchased by Customer under, an order form ("Platform Services") and (ii) any Professional Services purchased, each issued pursuant to this Agreement and agreed to by Customer and Company under an applicable order form ("Order Form").

1.4 For Customer's purchase of a subscription to the Platform Services and for each engagement for the provision of Professional Services from the Company to the Customer, an individual Order Form and Statement of Work shall be executed and delivered by the Customer and the Company, and shall be deemed incorporated into this Agreement by reference. In the event of a conflict between the terms of this Agreement and the terms of an Order Form and related Statement of Work, the terms of the Order Form and Statement of Work will take precedence.

1.5 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Platform Services in accordance with the Service Level Terms attached hereto as Exhibit A. As part of the registration process, Customer will identify an administrative username and password for Customer's account to access the Platform Services. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

1.6 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in Exhibit B.

2. PERMITTED USAGE; RESTRICTIONS AND RESPONSIBILITIES

2.1 Subject to the terms of this Agreement, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to access and use the Platform Services that Company makes available online for Customer's internal use during the term of the applicable Order Form. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, subject to the terms of this Agreement, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with Customer's use of the Platform Services.

2.2 Customer shall not:

- a. directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software");

- b. transfer or allow access to the Services or Company Data to any third party without the Company's prior written consent;
- c. use, reproduce, or incorporate any Company Data, outputs, or proprietary information to train, fine-tune, develop, or improve any artificial intelligence, machine learning, or large language model (LLM) systems, tools, or algorithms without the prior written consent of the Company; nor may Customer input, submit, transmit, or otherwise provide any Company Data, outputs, or proprietary information into or through any public or private large language model (LLM) tool or artificial intelligence system, including but not limited to generative AI tools or AI-powered assistants, regardless of whether such tools are hosted internally or by a third party, unless Customer has configured such tools to expressly prohibit the use of any inputted data, including Company Data, for the purpose of training, fine-tuning, or otherwise improving such LLM or artificial intelligence system's models. Customer agrees that it shall not use any free or unpaid tier of any LLM or artificial intelligence tool or service with Company Data unless Customer has confirmed that such tier is configured to prohibit training on input data. Customer shall maintain and, upon request, provide Company with reasonable documentation or confirmation evidencing such configuration.
- d. violate any applicable laws in its provision of Customer Data or its use of the Services, including, but not limited to use of Company Data;
- e. modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services);
- f. use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels from the Services or any Software;
- g. interfere with or disrupt the integrity of the Services and/or the data therein or attempt to gain unauthorized access to the Services or its related systems;
- h. directly or indirectly, use or allow automated systems, software, artificial intelligence, or any other tool to extract data from, access, or otherwise interact with the Services or Software without Company's express written consent;
- i. use the Services to store or transmit: (i) infringing, libelous, or otherwise unlawful or tortious material; (ii) material in violation of third-party privacy rights; or (iii) malicious code or viruses;
- j. make any attempt to identify any individual who may or may not be represented in any Company Data within the Service or otherwise provided by Company;
- k. link Company Data to any other patient-identifiable or de-identified source of information that may cause any individual to be intentionally or unintentionally identified; and
- l. make any attempt to identify any individual who is de-identified in the Company Data.

2.3 Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.4 Customer shall be responsible for (a) the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, and Customer's use of Customer Data with the Services; (b) obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"); (c) ensuring its users' compliance with this Agreement, applicable Order Forms, and documentation, and (d) maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

2.5 Company shall not, unless as required to provide the Services, use, reproduce, or incorporate any Customer Data or proprietary information to train, fine-tune, develop, or improve any artificial intelligence, machine learning, or large language model (LLM) systems, tools, or algorithms without the prior written consent of the Customer, provided however that Customer's use of such functionality within the Service shall serve and be deemed as consent; nor may Company input, submit, transmit, or otherwise provide any Customer Data or proprietary information into or through any public or private large language model (LLM) tool or artificial intelligence system, including but not limited to generative AI tools or AI-powered assistants, regardless of whether such tools are hosted internally or by a third party, unless Company has configured such tools to expressly prohibit the use of any inputted data, including Customer Data, for the purpose of training, fine-tuning, or otherwise improving such LLM or artificial intelligence system's models for the benefit of any third party. Company agrees that it shall not use any free or unpaid tier of any LLM or artificial intelligence tool or service with Customer Data unless Company has confirmed that such tier is configured to prohibit training on inputted data. Company shall maintain and, upon request, provide Customer with reasonable documentation or confirmation evidencing such configuration.

2.6 Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of this Section 2.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each Party (the "Receiving Party") understands that the other Party (the "Disclosing Party") may disclose non-public business, technical, financial or proprietary information relating to the Disclosing Party's business (hereinafter referred to as "Confidential Information" of the Disclosing Party). Confidential Information of Company includes, but is not limited to, Company Data, non-public information regarding features, functionality and performance of the Service and any Software. Confidential Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). Each party shall retain in confidence all Confidential Information disclosed or made available by the other party pursuant to this Agreement which (a) is designated in writing as proprietary or confidential, if disclosed in writing, (b) if disclosed orally, is designated in writing (which may be via email) as confidential within thirty (30) days of the oral disclosure, or (c) should reasonably be understood to be confidential by the recipient. Notwithstanding any failure to so designate it, Confidential Information of the Company includes the Services, the terms of this Agreement, and all Orders hereunder, and Customer Data is Customer's Confidential Information. The Receiving Party agrees to: (i) take reasonable precautions to protect such Confidential Information, and (ii) not disclose Confidential Information to any third party without the Disclosing Party's written consent, provided however, that Company may, as required, disclose Confidential Information to Company's contractors or agents ("Representatives") in its performance of the Services or as otherwise permitted herein, and where such Representatives are subject to confidentiality obligations at least as protective as those set forth in this section. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public other than as a result of the Receiving Party's breach of this Agreement, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of or reference to any Confidential Information of the Disclosing Party or (e) is required to be disclosed by law, provided that the Receiving Party shall first have given written notice to the Disclosing Party and made a reasonable effort to obtain a protective order. The Receiving Party acknowledges and agrees that a breach or threatened breach by the Receiving Party of any of its obligations under this Section 3 may cause the Disclosing Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the Disclosing Party will be entitled to equitable relief from any court with jurisdiction, without any requirement to post a bond or other security, or to prove actual damages. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise. On the expiration or termination of this Agreement, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or at the Disclosing Party's option, destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Customer grants Company and its applicable contractors and service providers a worldwide, limited-term license to host, copy, use, transmit, and display any Customer Data, each as appropriate for Company to provide and ensure proper operation, maintenance and improvement of the Services in accordance with this Agreement.

3.3 Company shall own and retain all right, title and interest in and to (a) the Services, Software, Company Data and all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Services or support, and (c) all Intellectual Property Rights (as defined below) related to any of the foregoing.

3.4 All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product, deliverables (including all data sets and other output resulting from Customer's use of the Services, provided however, that Customer shall retain all Intellectual Property Rights in the Customer Data) and other materials that are delivered to Customer under any Statement of Work or prepared by or on behalf of Company in the course of performing the Professional Services (collectively, "Work Product") shall be owned exclusively by Company. Company grants Customer a limited license to use Company's Intellectual Property Rights (to the extent Company incorporates or uses Company's Intellectual Property Rights in providing Professional Services under a Statement of Work) and all Intellectual Property Rights in the Work Product free of additional charge and on a non-exclusive, worldwide, non-transferable (except with prior written consent of Company), non-sublicensable (except with the prior written consent of Company), fully paid-up, royalty-free basis, solely to the extent necessary to enable Customer to make reasonable use of the applicable Work Product and the Services during the term of the applicable Statement of Work or Order Form.

3.5 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data, meta data, usage data and data derived therefrom), and Company will be free (during and after the Term of this Agreement) to use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings. Company will not disclose such data unless such data is aggregated or de-identified and solely used in connection with its business. Except as otherwise set forth in this Agreement, Customer Data shall not be disclosed to any third party. No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees described on the Order Form for the applicable Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or Statement of Work or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to, upon thirty (30) days' prior notice to Customer (which may be sent by email), change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Services Term or then-current Renewal Term (in each case as defined in the applicable Order Form(s)); provided, however, that Customer shall have the right to terminate the applicable Order Form and any corresponding Statements of Work by written notice to Company (which may be sent by email) within twenty (20) days after Customer receives such notice from Company changing the Fees or applicable charges or instituting new charges or Fees. If Customer believes that it has been billed incorrectly, Customer must notify Company, in writing, no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department. In the event of a dispute, Customer shall pay all undisputed Fees and work in good faith with Company to resolve the issue within thirty (30) days of notice.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

4.3 Company shall be entitled to suspend the provision of any Services if Customer fails to pay any undisputed amounts when due and such failure continues for fifteen (15) days following written notice to the Customer.

4.4 If Customer approves any onsite visits (such approval may be made via email or any other approved notice), then Customer will reimburse Company for all related travel and other expenses incurred in accordance with Company's Travel & Expense Policy, to be payable pursuant to Section 4.2 above.

5. TERM AND TERMINATION

5.1 This Agreement commences on the Effective Date and remains in effect for so long as any Order Form governed by this Agreement is active. Upon the expiration or termination of all applicable Order Forms, this Agreement shall automatically terminate; provided, however, that Customer may subsequently enter into a new Order Form that references this Agreement, and the parties agree that this Agreement shall govern such Order Form as of the effective date of that Order Form.

5.2 In addition to any other remedies it may have, either Party may also terminate this Agreement and any applicable Order Form(s) and/or Statements of Work hereunder upon thirty (30) days' notice (or immediately by Company upon notice in the case of nonpayment continuing for thirty (30) days or more following written notice to the Customer), if the other Party materially breaches any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) days of written notice of breach from the non-breaching Party. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive expiration or termination will survive expiration or termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

5.3 Upon termination of this Agreement, Customer will immediately cease use of and access to the Services and will delete and/or destroy all Company Data in its possession or control, including any copies thereof, within thirty (30) days following such termination. Upon Company's written request, Customer shall provide written certification confirming the deletion and/or destruction of Company Data in accordance with this Section. Any Company Data contained in Customer's routine backup systems shall be subject to Customer's continued compliance with the confidentiality obligations and use restrictions set forth in this Agreement.

6. WARRANTY AND DISCLAIMER

6.1 Company Warranties: Company represents and warrants that it shall use commercially reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Platform Services and shall perform the Professional Services in a professional and workmanlike manner. Company shall maintain commercially reasonable organizational and technical measures designed for the protection of the security, confidentiality, and integrity of Customer Data. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

6.2 Customer Warranties: Customer represents and warrants that (a) Customer has all right, title, and interest in the Customer Data (as defined below) and the necessary licenses, consents, and permissions to provide the Customer Data to Company for the purposes of this Agreement; (b) providing the Customer Data to Company will not infringe upon or violate any third-party rights; (c) Customer Data shall not include any Protected Health Information, as defined under HIPAA Privacy Rule (45 CFR § 160.103); and (d) Customer will use the Services only in compliance with all applicable documentation, laws and regulations.

7. LIMITATION OF LIABILITY

7.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), DIRECTORS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES BE RESPONSIBLE OR LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY ORDER FORM OR STATEMENT OF WORK ENTERED INTO HEREUNDER, ANY SUBJECT MATTER HEREUNDER, OR THE TERMS AND CONDITIONS RELATED HERETO, WHETHER ARISING OUT OF OR RELATING TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL

DAMAGES, INCLUDING LOST PROFITS; OR (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 EXCEPT FOR CUSTOMER'S BREACH OF ITS OBLIGATIONS UNDER SECTION 2 (PERMITTED USAGE; RESTRICTIONS AND RESPONSIBILITIES), OR CUSTOMER'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 8.2, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR ANY ORDER FORM OR STATEMENT OF WORK ENTERED INTO HEREUNDER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

7.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY, COMPANY'S AGGREGATE LIABILITY FOR ITS INFRINGEMENT INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.1 SHALL NOT EXCEED TWO TIMES (2X) THE FEES PAID BY CUSTOMER TO COMPANY IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE ACT GIVING RISE TO THE CLAIM.

8. INDEMNIFICATION

8.1 **Company Indemnification:** Provided that Customer complies with the indemnification procedure obligations set forth below, Company shall defend Customer from and against third-party claims or actions alleging that Customer's use of the Platform Services, as made available to Customer by Company and used pursuant to this Agreement, infringes such third party's intellectual property rights ("Claim"). Company will pay all damages and/or costs finally awarded against Customer or agreed to in settlement attributable to any such action. Without limitation of the foregoing, in the event the Platform Services become, or in the opinion of Company is likely to become subject to a Claim described in this section, Company shall, in its sole discretion, promptly as possible: (a) procure for Customer the unrestricted right to continue using the Platform Services; (b) replace the Platform Services with non-infringing, non-violating, compatible products with specifications and performance equal to or better than those of the unmodified Platform Services; or (c) modify the Platform Services so they are no longer infringing or violating while maintaining compatibility, specifications, and performance equal to or better than those of the unmodified Platform Services; or (d) terminate the Agreement and any applicable Order Forms, and issue to Customer a pro-rated refund.

Company assumes no liability hereunder for any claim of infringement if such claim is based on: (a) Customer Data, (b) the combination, operation or use of the Service, with non-AcuityMD programs or hardware, if the claim would not have arisen but for such combination, operation or use; (c) use of the Service other than in accordance with this Agreement, applicable Order Form or SOW, and any applicable documentation.

THIS SECTION SETS FORTH COMPANY'S ENTIRE LIABILITY AND OBLIGATION AND CUSTOMER'S SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

8.2 **Customer Indemnification:** Provided that Company complies with the indemnification procedure obligations set forth below, Customer shall defend Company from and against third-party claims or actions that arise out of or relate to: (i) any Customer Data or Customer's use of Customer Data with the Services; or (ii) Customer's violation of the permitted usage and restrictions set forth in Section 2 (d), (i), (j), (k) or (l). Customer will pay all damages and/or costs finally awarded against Company or agreed to in settlement attributable to any such action.

8.3 **Indemnification Procedure:** The indemnity obligations under this section are conditioned upon the indemnified Party: (a) providing written notice to the indemnifying Party of any such claim or action within sixty (60) days of receipt of the claim or action, (b) providing the indemnifying Party with sole control of the defense or settlement of the action or claim (provided that any settlement releases the indemnified Party from all liability), and (c) providing the indemnifying Party with all reasonable information and assistance, at the indemnifying Party's expense.

9. FORCE MAJEURE

In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, except for its payment obligations, if and to the extent such failure or delay is caused by any circumstances beyond Company's reasonable control, including but not limited to: (i) acts of God; (ii) flood, fire, earthquake, epidemics, pandemics or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; and/or (vii) shortage of adequate power, communications or transportation facilities.

10. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Either Party may, except to a direct competitor of the other, assign this Agreement without the other Party's consent in connection with a merger, acquisition, or sale of all or substantially all of its assets, provided that (i) the assigning Party provides written notice to the other Party within thirty (30) days of such assignment, (ii) the assignee assumes all obligations of the assigning Party under this Agreement in writing. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all amendments, waivers and/or modifications must be in a writing signed by both Parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Each Party's initial address for notices shall be as set forth in this Agreement or the applicable Order Form, but either Party may change such address for notices by e-mailing such address change to the other Party or otherwise notifying the other Party in writing of such address change. This Agreement and any matters arising out of or relating hereto shall be governed by the laws of the State of Delaware without regard to its conflict of laws provisions. All disputes, controversies or differences arising out of or in relation to this Agreement or the breach hereof, which cannot be settled by mutual accord, shall be submitted to the American Arbitration Association ("AAA") for arbitration in Boston, Massachusetts pursuant to such Association's rules for commercial arbitration. The number of arbitrators shall be three (3). The foregoing notwithstanding, to the extent that a Party may be entitled to equitable relief, such Party may bring an action in any appropriate court to obtain such equitable relief. The Parties shall, upon Customer's consent, work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Company to serve as a reference account upon request.

EXHIBIT A

Service Level Terms

The Platform Services shall be materially available 99.9% of the time, measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third-party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with the Platform Services material availability of less than 99.9% shall be that for each period of downtime lasting longer than one hour, Company will credit Customer 5% of Platform Services fees for each period of sixty (60) or more consecutive minutes of downtime (a "Credit"); provided that no more than one such Credit will accrue per day. Downtime shall begin to accrue as soon as Customer provides notice to the Company stating that downtime is taking place and continues until the material availability of the Platform Services is restored. In order to receive downtime Credit, Customer must notify Company in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime Credit. Such Credits may not be redeemed for cash and shall not exceed the equivalent of one (1) week of Platform Services Fees in any calendar month. Company will only apply a Credit for the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.

EXHIBIT B

Support Terms

Company will provide Technical Support to Customer via electronic mail on weekdays during the hours of 9:00 am through 5:00 pm EST, with the exclusion of Federal Holidays ("**Support Hours**").

Customer may initiate a helpdesk ticket during Support Hours via in app support or any time by emailing: support@acuitymd.com.

Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.