

## MASTER SERVICES AGREEMENT

This Master Services Agreement (the “**Agreement**”) is entered into as of the Effective Date by and between Unite USA Inc., a Delaware corporation having its principal place of business at 217 Broadway, Floor 8, New York, NY 10007 (“**Unite Us**”) and CliniSync (“**Customer**”).

### 1. DEFINITIONS

Capitalized terms used herein shall have the meaning set forth in this Agreement or as otherwise defined herein or in the applicable Statement of Work. For purposes of this Agreement, the following terms shall have the following meanings:

- 1.1. “**Authorized User**” means an individual who is an employee, consultant or agent of Customer who has been authorized by Customer to access the Services pursuant to Customer’s rights under this Agreement. For the avoidance of doubt, Customer shall not be liable for the acts or omissions of Licensed Entities (as defined in the Statement of Work) and users employed by or otherwise accessing the Services through Licensed Entities shall not be deemed Authorized Users of Customer.
- 1.2. “**Confidential Information**” means information and data relating to a party’s products, services, technology and systems, participants, customer, business requirements and plans, requests for proposal, pricing, finances, costs, and other similar non-public business information which is marked to indicate its confidential or proprietary status or by its nature is proprietary or non-public, even if not marked, and regardless how disclosed. Customer Data shall be considered Confidential Information of Customer. The Documentation and Project Materials (each as defined below), other than Project Materials containing Customer Data, are Confidential Information of Unite Us. Confidential Information does not include information which a party can demonstrate (w) was or becomes publicly known through no fault of the receiving party; (x) was known by the receiving party before receipt from the providing party; (y) was rightfully received by the receiving party without confidential or proprietary restriction from a source other than the providing party that does not owe a duty of confidentiality to the providing party with respect to such Confidential Information; or (z) was independently developed by the receiving party without the use of the Confidential Information.
- 1.3. “**Customer Data**” means all data and information (i) provided by Customer to enable Unite Us to perform the Services, and (ii) provided, made available, or created by or on behalf of Customer.
- 1.4. “**Dispute**” has the meaning set forth in Section 13.5.
- 1.5. “**Documentation**” means all reference and user manuals and guides describing the Unite Us Platform and Services and other supporting technical information, materials and documentation provided by Unite Us.
- 1.6. “**HIPAA**” means the Health Insurance Portability & Accountability Act of 1996, P.L. 104-191, as amended from time to time, together with its implementing regulations promulgated under HIPAA and under the Health Information Technology for Economic and Clinical Health Act (the “**HITECH Act**”), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“**ARRA**”), by the U.S. Department of Health and Human Services, including, but not limited to, the Privacy Rule, the Security Rule and the Breach Notification Rule, as amended from time to time.
- 1.7. “**Implementation Services**” means configuration, implementation and other services specified in an applicable Statement of Work which are provided by Unite Us to Customer to facilitate Customer’s implementation and use of the Services. For the avoidance of doubt, Implementation

Services include primarily information technology related services such as software configuration but shall not include software development or customization.

- 1.8. **“Indemnified Party”** has the meaning set forth in Section 10.1.
- 1.9. **“Indemnifying Party”** has the meaning set forth in Section 10.1.
- 1.10. **“Intellectual Property Rights”** means worldwide statutory and common law rights associated with: (a) patents and patent applications; (b) works of authorship, including copyrights, copyright applications, copyright registrations, and “moral rights”; (c) the protection of trade and industrial secrets and Confidential Information; (d) trademarks and service marks; (e) divisions, continuations, renewals, and re-issuances of any of the foregoing, whether now existing or acquired in the future; and (f) all other intellectual property rights enforceable under the Laws of any jurisdiction where the Services are used or from which any Services are provided.
- 1.11. **“Law”** means any law, statute, implementing regulation or mandatory agency guidance, executive order, ordinance or case law, including governmental healthcare program statutes, regulations and policies.
- 1.12. **“Licensed Entity”** has the meaning set forth in the Statement of Work. In addition, for purposes of this Agreement and the Statement of Work, the term “Licensed Entity” includes any other Provider Licensed Entity, Health Plan Licensed Entity, Community-Based Organization (CBO), that directly contracts with Customer or Unite Us in the Territory as defined in Statement of Work.
- 1.13. **“Losses”** has the meaning set forth in Section 10.1.
- 1.14. **“Network”** means the coordinated care network of Network Participants accessing the Unite Us Platform.
- 1.15. **“Network Data”** means any content or data uploaded, input, submitted, or transmitted to the Network, other than Customer Data.
- 1.16. **“Network Participants”** means those health care and social service providers who are Licensed Entities or who have entered into an agreement with Unite Us to access the Network. For purposes of this Agreement, Network Participants shall also include authorized “public health authorities” permitted to collect and receive protected health information pursuant to 45 C.F.R. § 164.512(b)(i) for public health activities, whether or not such public health authorities have entered into an agreement with Unite Us.
- 1.17. **“Personal Information”** or **“PII”** means personally identifiable information, data or records relating to or concerning any patient, member, plan participant, employee or contractor of Customer, including, without limitation, PHI (defined below).
- 1.18. **“PHI”** means member records and other Protected Health Information as defined under HIPAA.
- 1.19. **“Project Material”** means any and all materials made available by Unite Us to Customer under this Agreement, including reports, designs, analyses, recommendations, configurations, specifications, work plans, and other similar materials.
- 1.20. **“Services”** means the Unite Us Platform, content, Documentation, Implementation Services, hosting, management, support and maintenance services and any other product and services, together with all Updates, provided by Unite Us under this Agreement or as described in an applicable Statement of Work. Any services, functions, processes and responsibilities, whether or not specifically described in an applicable Statement of Work, that are required for or inherent in

the proper performance and delivery of the Services described therein shall be deemed to be part of the Services.

- 1.21. **“Unite Us Platform”** has the meaning set forth in the Statement of Work.
- 1.22. **“Service Levels”** means the service levels applicable to Services provided to Customer, as set forth in an applicable Statement of Work or in the Support Schedule and Service Level Addendum attached to this Agreement as Exhibit A.
- 1.23. **“Services Fees”** means the fees for the Services as set forth in an applicable Statement of Work.
- 1.24. **“Specifications”** means the features, functions, interface specifications and other technical or functional specifications applicable to the Unite Us Platform or Services that are identified or referenced in this Agreement, the applicable Statement of Work and the Documentation.
- 1.25. **“Statement of Work”** means a statement of work setting forth the Services to be provided hereunder, and all applicable Services Fees, that is signed by authorized representatives of Unite Us and Customer.
- 1.26. **“Unite Us Infrastructure”** means the computer hardware, software, communications systems, IT or telecommunications network and other infrastructure used by Unite Us to host and provide the Unite Us Platform.
- 1.27. **“Term”** has the meaning set forth in Section 12.1.
- 1.28. **“Updates”** means any modifications, error corrections, bug fixes, new releases, updates and upgrades to the Unite Us Platform (and any related Documentation) that may be provided or otherwise made available by Unite Us from time to time to customers of the Services.

## 2. SERVICES

- 2.1 **Provision of Services.** Unite Us and Customer may execute one or more Statements of Work during the Term and Unite Us shall provide the Services set forth in the applicable Statement of Work in accordance with the terms and conditions of this Agreement. The Services provided by Unite Us hereunder shall be delivered to Customer by electronic means. Unite Us shall provide Customer, Authorized Users, Licensed Entities, CBOs and other Network Participants access via the public internet to the Services during the Term. Unite Us shall provide Customer with the credentials and any other materials needed for Customer and Licensed Entities to access and use the Services.
- 2.2 **Hosting Infrastructure.** Unite Us shall be solely responsible for the setup, configuration, operation and management of the Services and the Unite Us Infrastructure. The Unite Us Infrastructure used to provide the Services shall be hosted at a physical location in the United States. In no event shall Unite Us copy, store, access, process or maintain PII outside of the United States. Unite Us agrees that all Customer Data storage and processing locations shall be HITRUST certified and that Unite Us will maintain HITRUST certification during the Term.
- 2.3 **No Software Development.** The parties agree that the performance of any software development or customization services is outside the scope of this Agreement.
- 2.4 **Implementation Services.** Unite Us will collaborate with Customer to understand Customer priorities for the coordinated care network in the Territory and develop a project plan that determines the optimal launch dates for Licensed Entities within the Territory (such plan, the “Project Plan”). The Project Plan will include mutually agreed upon goals for the number of Provider Licensed Entities and Health Plan Licensed Entities contracted each year. As part of the implementation

process, Unite Us and Customer shall develop a standard screening tool to be used by Licensed Entities.

**2.5 Interoperability.** Unite Us will use the Fast Healthcare Interoperability Resource (“FHIR”) to provide an industry standard protocol for interoperability among disparate systems and to enable seamless, on-demand information exchange. Unite Us will provide Customer and Licensed Entities Documentation that describes requirements to integrate with the Unite Us Platform, including requirements to enable bi-directional data exchange via a care summary writeback as Unite Us makes that functionality available through FHIR or other industry-standard protocols or single-sign-on options which will be adopted by Unite Us for organizations that are not able to adopt FHIR. Unite Us also employs functionality to ensure the ability to track transitions until the referral or transfer loop is closed. Unite Us will document the closed loop process to Customer. Unite Us also will enable referrals to be directly transmitted between Pathways HUBs within Ohio and Licensed Entities and will implement all enhancements required to complete PCHI certification for Pathways HUBs and launch the Pathways HUB... Unite Us will collaborate with Customer to provide input on and develop interoperability standards for social care referrals (including 360X Exchange standards) on a mutually agreed timeline.

**2.6 Key Performance Development.** Unite Us will work with Customer, Licensed Entities, CBOs and other stakeholders to develop key performance indicators.

**2.7 Text Removed.**

### **3. USE OF SERVICES BY CUSTOMER**

**3.1 License to Customer.** Unite Us hereby grants to Customer a non-exclusive, and non-transferable, right and license during the Term to (i) access and use the Services for the benefit of Customer and Licensed Entities, as set forth in a Statement of Work, (ii) reproduce, distribute and display the Documentation to Authorized Users and Licensed Entities, and (iii) use and access Network Data as permitted by the Statement of Work in compliance with HIPAA and other applicable Laws.

**3.2 Authorized Users.** Customer shall be responsible for the acts or omissions of any person who accesses the Services using passwords or access procedures provided to or created by Customer or an Authorized User. Customer shall not be responsible for the acts or omissions of the Licensed Entities and their users. Unite Us reserves the right to refuse registration of, or to cancel, login IDs that violate the terms and conditions set forth in this Agreement. Customer agrees to notify Unite Us immediately upon learning of any unauthorized use of Customer’s or an Authorized User’s account or any other breach of security.

**3.3 Restrictions.** Other than as expressly permitted herein or in a Statement of Work, Customer may not and may not permit third parties to: (a) sell, assign, sublicense or otherwise transfer the Unite Us Platform to third parties; (b) resell the Unite Us Platform to any third party; (c) use the Unite Us Platform to provide or perform service bureau processing, or hosting services for any third party; (d) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code of the Services, or the underlying ideas, algorithms or trade secrets therein; (e) use the Unite Us Platform to knowingly transmit malware, spam or other unsolicited emails in violation of Law, or to post or send any unlawful, threatening, harassing, racist, abusive, libelous, pornographic, defamatory, obscene, or other similarly inappropriate content; (f) remove any copyright notice, trademark notice, and/or other proprietary legend set forth on or contained within any of the Documentation; or (g) otherwise use the Services or Network Data in violation of any Law.

### **4. SUPPORT**

**4.1 Support and Updates.** Unite Us shall provide the maintenance and support services described in the Support Schedule and Service Level Addendum attached hereto as Exhibit A and in the applicable Statement of Work. Unite Us shall maintain and provide periodic Updates to the Services. During the Term, Unite Us shall provide Customer (i) all Updates required for Customer and Licensed Entities to use the Services in compliance with applicable Laws, and changes thereto, and (ii) all applicable Updates made available by Unite Us to its other customers of the Services

hereunder. Any Update made available by Unite Us hereunder shall be deemed part of the Services and shall be subject to the terms and conditions of this Agreement. To the extent Unite Us acquires some or all components of the Services and associated Unite Us Infrastructure from third parties, Unite Us shall be responsible for obtaining appropriate updates and upgrades from such third parties and applying them in a manner that does not materially disrupt the provision of Services to Customer or Licensed Entities and in accordance with any Service Levels.

**5. FEES AND PAYMENT. Text Removed.**

**6. PROPRIETARY RIGHTS**

**6.1 Unite Us' Proprietary Rights.** As between Unite Us and Customer or any Authorized User, Unite Us and its licensors own and shall retain all Intellectual Property Rights in and to the Services, the Unite Us Platform, Project Materials (excluding Project Materials encompassing Customer Data), Documentation and the Unite Us Infrastructure used to provide the Services to Customer, subject to the rights granted to Customer in this Agreement. Customer shall only have those rights and licenses to access and use the Services expressly granted by Unite Us hereunder. If Customer provides feedback to Unite Us concerning the functionality and performance of the Services, Customer hereby assigns to Unite Us all right, title and interest in and to the feedback and Unite Us is free to use such feedback without payment or restriction, provided that Customer retains a fully paid up, perpetual license to use such feedback.

**6.2 Customer's Proprietary Rights.** As between Customer and Unite Us, Customer owns and shall retain all Intellectual Property Rights in and to Customer Data and any of its own Confidential Information (including PII) disclosed or created by Customer hereunder. Unite Us shall have only those rights to access and use Customer Data and Customer Confidential Information in the performance of the Services as expressly granted by Customer hereunder. Customer also retains all Intellectual Property Rights in and to all Customer systems, software, patents, copyrights and trade secrets that Unite Us may access or use in its performance of Services for Customer hereunder.

**7. DATA**

**7.1 Data.** As between Unite Us and Customer, Customer will retain all ownership, right, title and interest in and to Customer Data. The use and disclosure of Customer Data will be controlled by Customer's Data Governance Policies and Procedures. As between Unite Us, Customer, and each Licensed Entity, each Licensed Entity will retain all ownership, right, title, and interest in and to data inputted by such Licensed Entity into the Unite Us Platform. Customer may provide PII to Unite Us in the course of using the Services only if: (a) disclosure of such PII is necessary for Customer's and Licensed Entities' use of the Services; (b) Customer has all consents, rights and authorizations necessary to provide Unite Us with the PII subject to the use and disclosure restrictions on Unite Us under this Agreement and the parties' HIPAA Business Associate Addendum attached hereto as Exhibit B [Exhibit not attached]; and (c) Customer's provision of such PII to Unite Us as contemplated under this Agreement does not and will not violate any applicable Laws. Unite Us' use and disclosure of Customer Data will be limited to the minimum necessary to perform the Services, and as otherwise expressly described in this Agreement or the applicable Statement of Work. Unite Us may use Customer Data to perform the Services and may use Network Data as expressly permitted by individuals that are the subject of such data and Network Participants, as applicable, and in accordance with applicable Laws.

**7.2 Alerting, Auditing and User Management.** Unite Us will provide functionality that will audit use of the Services and alert Customer, Licensed Entities and other stakeholders to changes in user accounts or to questionable use of the Services.

## 8. CONFIDENTIAL INFORMATION

- 8.1 Use and Disclosure Restrictions.** Each party agrees: (a) to protect the disclosing party's Confidential Information from unauthorized dissemination and use; (b) to use the disclosing party's Confidential Information only for the performance of the receiving party's obligations and in connection with the exercise of the receiving party's rights hereunder; (c) to disclose any Confidential Information only to those of its employees, agents, or contractors who have a need to know for the performance of their duties and who are bound to comply with confidentiality obligations no less restrictive than the requirements set forth in this Section 7.2; (d) not to disclose or otherwise provide to any third party, without the prior written consent of the disclosing party, any Confidential Information or any part or parts thereof; (e) to undertake whatever action is necessary to prevent or remedy (or authorize the disclosing party to do so in the name of the receiving party) any breach of the receiving party's confidentiality obligations set forth herein or any other unauthorized disclosure of any Confidential Information by its current or former employees, agents, or contractors; and (f) not to remove or destroy any proprietary or confidential legends or markings placed upon or contained within any Confidential Information.
- 8.2 Legally Compelled Disclosures.** Notwithstanding the restrictions on the use and disclosure of Confidential Information set forth in Section 8.1, the receiving party may use or disclose Confidential Information to the extent the receiving party is legally compelled to disclose such Confidential Information; provided, however, prior to any such compelled disclosure the receiving party shall (to the extent allowed under applicable Law) notify the disclosing party and cooperate fully with the disclosing party in protecting against any such disclosure, and if applicable, obtaining a protective order narrowing the scope of such disclosure and use of the Confidential Information.
- 8.3 Equitable Relief.** Each party acknowledges and agrees that, due to the unique nature of the Personal Information and other Confidential Information, there may be no adequate remedy at law to compensate the disclosing party for the breach of this Section 7.2; that any such breach may result in irreparable harm to the disclosing party that would be difficult to measure; and, therefore, that upon any such breach or threat thereof, the disclosing party shall be entitled to seek injunctive and other appropriate equitable relief (without the necessity of posting a bond), in addition to whatever remedies it may have at law, under this Agreement, or otherwise.

## 9. REPRESENTATIONS AND WARRANTIES

- 9.1 Services Warranty.** Unite Us represents, warrants, and covenants that, in all material respects: (a) all Services will operate in accordance with their applicable Documentation and will conform to their Specifications; (b) all Services will be provided in a professional and workmanlike manner and in accordance with generally accepted industry standards; (c) all Services will comply with applicable Law and will allow Customer to comply with applicable Laws, and Unite Us' performance of the Services as provided herein will not violate or contravene any applicable Law; (d) Unite Us owns or has the right to license to Customer the Services and Unite Us Platform as licensed herein; (e) to the knowledge of Unite Us, Unite Us' employees, contractors and agents are legally authorized to work at their work locations, and have the certifications, skills and qualifications necessary to perform the Services as set forth herein or in an applicable Statement of Work; (f) Unite Us has obtained and will during the Term of this Agreement maintain HITRUST certification, as well as any other certification or accreditation required by applicable Law to support Customer's status as a health information exchange in Customer's use of the Services, and Unite Us agrees to share with Customer any corrective action plan(s) deemed critical to maintaining the security of Customer Data, as well as a proposed remediation plan with timeline, as required by HITRUST; (g) Unite Us shall use commercially reasonable efforts designed to ensure the Services do not include any of the following: malware, viruses, worms, Trojan horses, spyware and other computer instructions or devices that were designed to, in each case in any material respect, disrupt, damage, disable, alter, inhibit or shut down the Services or Customer's equipment; (h) all Services will operate in accordance with and conform to the applicable responses provided by Unite Us to Customer's Requests for Proposal, [Text Removed].

**9.2 Disclaimer of Warranty.** EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE SERVICES ARE PROVIDED WITHOUT ADDITIONAL WARRANTIES AND, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED HEREIN, UNITE US EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES, DOCUMENTATION AND PROJECT MATERIALS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CUSTOMER MAKES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT THE CUSTOMER DATA WILL MEET UNITE US'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, MEET ANY ACCURACY OR RELIABILITY STANDARDS OR BE ERROR FREE.

## **10. INDEMNIFICATION AND INSURANCE**

**10.1 Indemnification.** Each of Unite Us and Customer (each an “**Indemnifying Party**”) agree to indemnify, defend, and hold harmless (including payment of reasonable attorneys’ fees) the other, their affiliates (including Licensed Entities), and any employee or agent thereof (each of the foregoing being hereinafter referred to individually as “**Indemnified Party**”) against any losses arising from third party claims (collectively, “**Losses**”) (other than liability arising from the willful misconduct or gross negligence of the Indemnified Party) arising from or in connection with an Indemnifying Party’s performance of any Services under this Agreement or breach of any obligation or representation, warranty or covenant hereof, but solely to the extent that such liability is directly attributable to such Indemnifying Party. The foregoing indemnities shall be subject to (a) the Indemnifying Party having sole control of the defense of such action at its option; (b) the Indemnified Party promptly notifying the Indemnifying Party upon learning of any claim to which the foregoing obligations will apply; and (c) the Indemnified Party providing all reasonable assistance requested by the Indemnifying Party with respect thereto. The Indemnifying Party may not settle any claim without the Indemnified Party’s consent (which shall not be unreasonably withheld or delayed). The sole and exclusive remedy for all Losses arising out of this Section 10.1 shall be the indemnification provisions set forth herein.

**10.2 IP Indemnification.** Unite Us agrees to indemnify, defend, and hold harmless Customer Indemnified Parties against any Losses arising from or in connection with claims that the Services infringe any U.S. copyright or U.S. patent or misappropriates any trade secret of any third party. The foregoing indemnities shall be subject to (a) the Indemnifying Party having sole control of the defense of such action at its option; (b) the Indemnified Party promptly notifying the Indemnifying Party upon learning of any claim to which the foregoing obligations will apply; and (c) the Indemnified Party providing all reasonable assistance requested by the Indemnifying Party with respect thereto. Unite Us may not settle any claim without Customer’s consent (which shall not be unreasonably withheld or delayed). Customer may retain its own independent counsel to monitor the defense or settlement of the claim, at Customer’s sole expense. In the event of any claim that is subject to the foregoing indemnity obligations, or if the use of the Services (or any part thereof) is or in Unite Us’ opinion may be enjoined, Unite Us may either (i) modify or replace the affected Services while providing equivalent functionality, performance and operation, or (ii) obtain all necessary licenses and rights for Customer to continue to use the Services as contemplated under this Agreement. If Unite Us is unable to accomplish any of the foregoing within a reasonable period of time, then Unite Us may require Customer to cease using the Services and terminate this Agreement upon which Unite Us shall refund to Customer any unamortized annual fees paid to Unite Us in advance, amortized on a monthly basis. The sole and exclusive remedy for all Losses arising out of this Section 10.2 shall be the indemnification provisions set forth herein. Furthermore, Customer agrees that in no event will Unite Us have any liability under this Section to the extent any infringement claim is based on: (a) the use of any Services in combination with any hardware, software, systems, or other elements not supplied or approved for use by Unite Us (if the claim

would have been avoided but for such combination); (b) any modifications made to the Services by anyone other than Unite Us; or (c) any use of the Services not in accordance with the terms of this Agreement.

- 10.3 Insurance.** Unite Us shall maintain in effect the following policies of insurance covering claims and liabilities arising from this Agreement: (a) all insurance coverages required by applicable Law, including workers' compensation with statutory minimum limits; (b) employer's liability insurance with no less than a \$1,000,000 limit; (c) commercial general liability insurance with limits of not less than \$1,000,000 per occurrence and aggregate, providing coverage for bodily injury, personal injury, or death of any persons and injury to or destruction of property, including loss of use resulting therefrom, and also including contractual liability covering Unite Us' liability under this Agreement; (d) professional liability or errors and omissions insurance covering failure of the Services to conform to Specifications with limits of at least \$5,000,000, which provides coverage on an occurrence basis or, if on a claims-made basis, then Unite Us will maintain continuous coverage for three (3) years after the termination or expiration of this Agreement; (e) automobile (or other motor vehicle) liability insurance with not less than a \$1,000,000 limit covering the use of any auto (or other motor vehicle) in the rendering of Services to be provided under this Agreement; (f) if this Agreement involves hosting or processing of any Personal Information, cyber liability insurance with limits of not less than \$5,000,000 for each occurrence and an annual aggregate of not less than \$10,000,000, covering privacy, media, information theft, damage to or destruction of electronic information, intentional and unintentional release of private information, alteration of electronic information, extortion and network security which provides coverage on an occurrence basis or, if on a claims-made basis, then Unite Us will maintain continuous coverage for three (3) years after the termination or expiration of this Agreement; (g) third party fidelity/crime covering not less than \$1,000,000 per occurrence; and (h) excess liability insurance with not less than a \$2,000,000 limit for the commercial general liability policy required in subsection (c) above.

## **11. LIMITATION OF LIABILITY**

- 11.1** IN NO EVENT WILL CUSTOMER, UNITE US OR ANY OF THEIR RESPECTIVE LICENSORS, LICENSED ENTITIES, PARTNERS OR REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OR ACCURACY OR COMPLETENESS OF ANY DATA ACCESSIBLE VIA THE SERVICES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL CUSTOMER'S OR UNITE US' COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE PRIOR EIGHTEEN (18) MONTHS' FEES PAID BY CUSTOMER TO UNITE US PURSUANT TO THE APPLICABLE STATEMENT OF WORK. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THE DISCLAIMERS AND LIMITATIONS OF THIS SECTION 11.1 SHALL NOT APPLY TO DISCLAIM OR LIMIT EITHER PARTY'S INDEMNITY OBLIGATIONS OR TO DISCLAIM OR LIMIT EITHER PARTY'S DAMAGES CAUSED BY BREACH OF CONFIDENTIALITY OBLIGATIONS OR BREACH OF THE HIPAA BUSINESS ASSOCIATE ADDENDUM OBLIGATIONS, OR MISAPPROPRIATION BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY.

- 11.2 Force Majeure.** In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond its reasonable control, the



affected party shall give written notice thereof to the other party and its performance shall be extended for the period of delay or inability to perform due to such occurrence.

## **12. TERM AND TERMINATION**

- 12.1 Term.** The term of this Agreement shall commence on the Effective Date and shall expire with the last to expire Statement of Work (the “**Term**”). The term of each Statement of Work shall commence on the effective date of the Statement of Work and shall continue for the initial term set forth in the Statement of Work (the “**Initial Term**”). After the applicable Initial Term, the Statement of Work will renew for successive periods of one (1) year, unless terminated by either party no later than ninety (90) days prior to the expiration of the then-current term. After the Initial Term expires, a Statement of Work may be terminated without cause or penalty by either party at any time upon one hundred twenty (120) days’ prior written notice to the other party, provided that in the event of termination without cause by Unite Us, Unite Us provides Customer a pro rata refund of all prepaid fees.
- 12.2 Termination for Cause.** If either party materially defaults in any of its obligations under this Agreement or a Statement of Work, the non-defaulting party shall have the right to terminate this Agreement or the applicable Statement of Work, in whole or in part, as the case may be, by written notice to the other party if the defaulting party is unable to cure the material default within thirty (30) days after receiving written notice of such default, which may be extended for an additional thirty (30) day period upon the defaulting party’s reasonable request in the event that the defaulting party is exercising reasonable efforts to cure the breach but is unable to do so within the initial thirty (30) day period. Either party may terminate this Agreement and all Statements of Work immediately in the event that the other party is excluded, suspended, debarred or otherwise rendered ineligible to participate in federal or state health care programs such as Medicare or Medicaid. In addition to any other remedies Customer may have, in the case where Customer is the non-defaulting party, Customer will be entitled to a pro rata refund of Service Fees paid to Unite Us for any Services paid for but not provided as of the termination date. Annual fees paid in advance shall be prorated on a daily basis. Upon the early termination of this Agreement where the Customer is the defaulting party, Customer will pay in full for the Services up to and including the last day on which the Services are provided.
- 12.3 Termination for Bankruptcy.** Either party may terminate this Agreement if the other party: (a) becomes insolvent; (b) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; (c) is declared insolvent or admits in writing by means of a publicly available press release its insolvency or inability to pay its debts or perform its obligations as they mature; or (d) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment, or composition, or makes a general assignment for the benefit of creditors, provided that, in the case of an involuntary proceeding, the proceeding is not dismissed with prejudice within sixty (60) days after the institution thereof.
- 12.4 Effect of Termination.** Upon written request by either party each party shall return (or destroy and certify the destruction thereof) all Confidential Information of the other party in its possession or control; provided, however, that neither party shall be obligated to return information maintained in archival form if return or destruction of information is prohibited by applicable Law. Termination of this Agreement, or a Statement of Work, by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party’s obligations under this Agreement. No termination of this Agreement shall relieve either party from liability for any breaches occurring prior to the effective date of such termination. Except as expressly set forth herein, all licenses granted pursuant to this Agreement shall terminate upon termination or expiration of this Agreement.
- 12.5 Survival.** Upon any expiration or termination of this Agreement, all corresponding rights, obligations and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) shall

survive and (b) the provisions of Sections 1 (Definitions), 6 (Proprietary Rights), 7 (Data), 7.2 (Confidential Information), 9.2 (Disclaimer of Warranty), 10 (Indemnification and Insurance), 11 (Limitation of Liability), 12 (Term and Termination), and 13 (General Provisions) and the terms and conditions of any related Business Associate Addendum, shall survive the expiration or any termination of this Agreement.

### 13. GENERAL PROVISIONS

- 13.1 Compliance with Laws.** Each party will comply with all applicable Laws, including without limitation, the Federal Anti-Kickback statute (42 U.S.C. § 1320a-7b) and HIPAA, as amended. Each party will comply with the requirements under the applicable confidentiality and privacy Laws of the State of Ohio, including, without limitation, the following sections of the Laws of the State of Ohio as such may be amended, moved or otherwise enacted to address such matters from time to time: (i) ORC § 3701.17 – concerning the confidentiality of protected health information reported to or obtained by the Ohio Department of Health; (ii) ORC § 3701.243 – concerning the confidentiality of HIV test results or diagnosis; (iii) ORC § 3701.74 – concerning medical records in the care of health care providers; (iv) ORC § 3793.13 – concerning the confidentiality of drug and alcohol abuse records; (v) ORC § 5101.27 – concerning the confidentiality of medical information regarding public assistance recipients; (vi) ORC § 5122.31 – concerning the confidentiality of mental health records; and (vii) OAC 5160-26-08.3 – concerning confidentiality of medical information in the custody of a managed care plan. Unite Us will store and process all Customer Data and perform Services solely within the United States.
- 13.2 Independent Contractor.** Unite Us is an independent contractor and engages in the operation of its own business. Neither party is or will be deemed the agent of the other party for any purpose, including entering into contracts, assuming obligations or making any warranties or representations on behalf of the other party. Nothing in this Agreement will be construed to establish a relationship of co-partner or joint venture between the parties.
- 13.3 Successors and Assigns.** Neither party will assign, transfer or delegate any of the rights or obligations under this Agreement without the prior written consent of the other party, except that either party may assign its rights and obligations under this Agreement or any Statement of Work to its affiliate or in connection with a change of control, merger or acquisition of all or substantially all of the assets to which this Agreement relates. This Agreement and all of its provisions will inure to the benefit of and become binding upon the parties and the successors and permitted assigns of the respective parties.
- 13.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio without reference to its conflicts of law provisions.
- 13.5 Dispute Resolution.** In the event either party issues a written notice of a dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement (a “**Dispute**”), each party will appoint a senior representative who will meet for the purpose of endeavoring to resolve the Dispute. If the Dispute continues unresolved after ten (10) business days, then upon the written request of either party, each of the parties will appoint a designated senior business executive who will meet within ten (10) business days for the purpose of endeavoring to resolve the Dispute. During the thirty (30) day period following such meeting (or such other period as the parties may agree in writing), the designated senior business executives will meet as often as the parties reasonably deem necessary in order to negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto. If a Dispute is not resolved by the parties within ninety (90) days after the issuance of the initial written notice under this provision, either party may take any available action in Law or in equity. Nothing in this provision shall prevent a party from seeking equitable relief before commencing or during the foregoing informal dispute resolution processes.

- 13.6 Notices.** All notices provided under this Agreement will be in writing, shall reference this Agreement, and will be deemed given upon receipt if sent as follows: (a) personally delivered; (b) by overnight mail by USPS or a courier service with confirmed delivery; (c) by USPS certified mail (return receipt requested); or (d) by electronic means, provided that delivery can be confirmed. If notice is mailed, delivery is effective at the date and time shown on the confirmation or return receipt. The addresses for notices are set forth on the signature page of this Agreement. These addresses may be changed by written notice to the other party.
- 13.7 No Waiver; Severability; Remedies; No Joint Liability.** The waiver of a breach of any term or condition of this Agreement will not serve to waive any other breach of that term or condition, or of any other term or condition, unless agreed by the parties in writing. If any provision of this Agreement is found to be unenforceable, then the unenforceable provision will be reformed to conform to the Law and all other parts of this Agreement will remain enforceable. The rights and remedies of the parties provided in this Agreement are cumulative and are in addition to any other rights and remedies provided by Law.
- 13.8 Controlling Terms.** The provisions of this Agreement supersede any inconsistent provisions in any other document including any quote, proposal, confirmation, acceptance, acknowledgement or similar form.
- 13.9 Entire Agreement.** This Agreement may be executed in any number of counterparts, each of which is deemed an original but all of which constitute the same instrument. This Agreement may be executed by the exchange of certified electronic signatures, or copies delivered by electronic mail in Adobe Portable Document Format or similar format, and any signature transmitted by such means for the purpose of executing this Agreement is deemed an original signature for purposes of this Agreement. This Agreement, including all exhibits, attachments, and any Statements of Work entered into hereunder (all of which are incorporated in this Agreement by reference), constitutes the entire agreement on this subject and supersedes all previous and contemporaneous communications, representations, or agreements between Customer and Unite Us regarding the referenced subject matter. This Agreement may not be modified orally, and no modification, amendment, or supplement is binding unless it is in writing and signed by authorized representatives of Customer and Unite Us. Under no circumstance shall Customer be bound by any website agreements or terms or pass through or “click to accept” agreements or terms or similar agreements or terms unless reduced to a written document executed by each of the parties and attached as an amendment to this Agreement. The Network Participation Agreement and End User License Agreement do not apply to and will not bind Customer. In the event of any conflict between (i) the Network Participation Agreement and End User License Agreement accepted by Licensed Entities and (ii) this Agreement, this Agreement shall govern with respect to such Licensed Entities. Indemnity and Liability provisions in the Network Participation Agreement and End User License Agreement shall not apply to Licensed Entities or their Authorized Users. In addition, in the event that Licensed Entities execute a direct agreement with Unite Us, such agreement shall supersede any Network Participation Agreement and End User License Agreement accepted by such Licensed Entities and will control as to such Licensed Entities.
- 13.10 Construction.** The descriptive headings of the sections of this Agreement are inserted for convenience only and do not control or affect the meaning or construction of any section. This Agreement has been negotiated by the parties and their respective counsel. This Agreement shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.
- 13.11 Use of Name.** Except as specifically permitted in this Agreement or as required by applicable Law, neither party will use the names or trademarks of the other party in any advertising, publicity, endorsement, or promotion without the prior written consent of the other party, except for standard materials developed by Unite Us for purposes of community planning, provider engagement, public notice of Network participation, or advisory committee activities.

**13.12 Audit Rights.** Customer, at its sole expense, may conduct an audit of the records related to this Agreement to confirm Unite Us' compliance once in each twelve-month period (or more frequently if required by a governmental action), after providing at least 30 days' notice to Unite Us. Unite Us shall provide access to all records reasonably necessary to complete the audit.

**13.13 Security.** Unite Us will maintain administrative, technical, and physical safeguards to maintain the security of and prevent unauthorized access to Customer Data and Network Data in accordance with the Business Associate Agreement attached as Exhibit B and applicable law, including HIPAA. Unite Us will maintain its HITRUST certification during the Term.

**Text and Signatures Removed.**

**EXHIBIT A – SUPPORT SCHEDULE AND SERVICE LEVEL ADDENDUM**

1. **Software Support Services.** Unite Us shall provide Software Support Services to Customer and Licensed Entities in accordance with the terms set forth in this schedule (the “Software Support Schedule”), including as applicable: (a) causing the Services to operate according to the Specifications and correcting reported errors in accordance with the Service Levels; (b) performing standard preventive maintenance on the Unite Us Infrastructure used to support the delivery of Services and (c) providing maintenance and support as set forth in the applicable Statement of Work. Unite Us shall use commercially reasonable efforts to respond to Software Support Requests from 9AM to 10PM Eastern Time in accordance with the table below, except for Severity 1 and 2 issues which will be responded to within the timeframes outlined in the table below. As used herein, the term “Customer” includes both the Customer and Licensed Entities.
  
2. **Unite Us Platform Availability.** Unite Us shall make the Unite Us Platform Available to Customer, as measured by hours Available over the course of each calendar month during the Term, at least 99.9% of the time, excluding the time the Unite Us Platform is not Available as a result of one or more Excluded Events.
  
3. **Response to Software Support Requests.** Unite Us shall respond to Software Support Requests in accordance with the table below.

Severity Level	Response Time	Unite Us Action to Resolve
Severity 1	Within 30 minutes, Unite Us acknowledges receipt of the Software Support Request and identifies an individual assigned to resolve the Error. Unite Us provides Customer with periodic updates on the status of the Error and Error Correction.	Unite Us immediately and continuously works (24x7x365) until it has achieved a Workaround or Error Correction. If Unite Us has not already done so, Unite Us escalates the Error to Second-Level Support within 24 hours. If Unite Us identifies a Workaround for a Severity 1 Error, Unite Us will continuously work (24x7x365) to provide an Error Correction unless otherwise agreed by Customer in writing.
Severity 2	Within 30 minutes, Unite Us acknowledges receipt of the Software Support Request and identifies an individual assigned to resolve the Error. Unite Us provides Customer with periodic updates on the status of the Error and Error Correction.	Unite Us immediately and continuously works (24x7x365) until it has achieved a Workaround or Error Correction. If Unite Us has not already done so, Unite Us shall escalate the Error to Second-Level Support within 24 hours. If Unite Us identifies a Workaround for a Severity 2 Error, Unite Us will continue work during normal business hours to provide an Error Correction.
Severity 3	Within 24 hours, Unite Us acknowledges receipt of the Software Support Request and identifies an individual assigned to resolve the Error. Unite Us provides Customer with periodic updates on the status of the Error and Error Correction.	Unite Us shall provide a Workaround or Error Correction within 7 Business Days. If Unite Us identifies a Workaround for a Severity 3 Error, Error Correction may be provided in the next release of the Unite Us Platform.
Severity Level	Definition	
Severity 1	Critical Business Impact – a “system down,” or the operation of a mission critical application is severely impacted, and Customer’s work cannot reasonably continue (e.g., outages that compromise medical decisions or result in substantial financial loss), or the integrity of Customer Data is compromised.	

Severity 2	Significant Business Impact – Severely limited functionality. The impact is business critical, though some limited amount of Customer’s work is still possible (e.g., severe slowdown of the Unite Us Platform).
Severity 3	No Business Impact – An Error that does not cause a significant portion or feature of the Unite Us Platform to be inoperative. The impact is not business critical (e.g., Errors in content within a resource directory).

**4. Definitions.** For purposes of this Software Support Schedule, the following terms have the meanings set forth below. Capitalized terms used but not defined herein have the respective meanings given to them in the Agreement.

- a. **“Available”** means the Unite Us Platform is available and operable without substantial degradation for access and use by Customer over the Internet in material conformity with the applicable Statement of Work.
- b. **“Business Day”** means any day other than a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in New York City.
- c. **“Error”** means any disruption, malfunction or failure of the Unite Us Platform or Services.
- d. **“Error Correction”** means a permanent solution, fix, repair, patch, bypass or other correction provided by Unite Us to correct an Error.
- e. **“Excluded Event”** means any misuse of the Unite Us Platform by Customer; failure of or degradation in Customer’s internet connectivity; use of the Unite Us Platform by Customer with any third-party software or products that Unite Us has not approved, provided or caused to be provided to Customer; use of a non-current version or release of the Unite Us Platform by Customer; Internet or other network traffic problems (including, but not limited to, Amazon Web Services outages) other than problems arising in or from networks actually, or required to be, provided or controlled by Unite Us; Customer’s failure to meet any written minimum hardware or software requirements agreed upon by the parties; Downtime or outages resulting from Force Majeure Events; and Scheduled Downtime or outages of the Unite Us Platform in whole or in part.
- f. **“First-Level Support”** means the identification, diagnosis and correction of Errors by customer support specialists via a Unite Us-approved email or live-chat support channel and access to technical information from the Unite Us knowledge base.
- g. **“Response Time”** means the time between when Unite Us has received a Software Support Request from Customer and the time when Unite Us has acknowledged receipt of such request.
- h. **“Scheduled Downtime”** means no more than eight (8) hours per month on the weekends or between the hours of 9PM and 6AM Eastern Time Monday through Friday, during which time the Unite Us Platform is not available, provided that Unite Us has given Customer reasonable advanced notice of any such unavailability.
- i. **“Second-Level Support”** means the identification, diagnosis and correction of Errors by product specialists, which may include attempts to duplicate Errors and define root causes.
- j. **“Software Support Request”** means a support request relating to the Unite Us Platform or Services submitted by an Authorized User via a Unite Us-approved email or live-chat support channel.
- k. **“Software Support Services”** means First-Level Support and Second-Level Support.
- l. **“Workaround”** means a temporary solution, fix, repair, patch, bypass or other correction provided by Unite Us in order to temporarily correct an Error until an Error Correction is provided.