

# TERMS OF SERVICE

**THIS TERMS OF SERVICE AGREEMENT** (the “**Agreement**”) is made by and between ZyDoc Medical Transcription, LLC d/b/a ZyDoc® (“**Company**”, “**Our**”) with its principal place of business at 1455 Veterans Hwy, Islandia, NY 11749-4836, and you, an individual who is at least 18 years of age (“**You**”, “**Your**”). By creating an Account (as hereinafter defined), joining an existing Account and (or) accepting an invitation to join an existing Account as an Administrator and (or) Author (as hereinafter defined) in connection with the Website (as hereinafter defined) or Services (as hereinafter defined), You agree to this Agreement. If You are an individual using the Website and (or) Services on behalf of a company, entity, partnership or organization (“**Organization**”), then You represent and warrant that You: (i) are an authorized representative with the authority to bind such Organization to this Agreement; (ii) have read this Agreement; (iii) understand this Agreement in its entirety, and (iv) agree to this Agreement on behalf of such Organization. If You do not agree to this Agreement, please do not use the Website or the Services. This Agreement was last updated on May 2, 2019.

## ACCEPTANCE OF THIS AGREEMENT

**WHEREAS**, You engage Company to provide the Services as described herein;

**WHEREAS**, by using the Services and (or) interacting with the Website, You will be deemed to have irrevocably agreed to this Agreement;

**WHEREAS**, Company may modify this Agreement prospectively from time to time in Company’s sole discretion and Your continued use or accessing of the Services and (or) interacting with the Website following the posting of any changes to this Agreement constitutes Your acceptance of such changes; and

**WHEREAS**, upon fulfilling any conditions precedent, including without limitation, payment, deposits, licenses, delivery of Your data, content, protocols, instructions, templates, scripts and database information, as more fully described herein, Company shall begin implementation of the Services.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby agreed to by the parties, the parties hereto agree to the following terms and conditions of this Agreement.

## 1. DEFINITIONS

(a) “**Account**” means the account You (or Your Administrator) create(s) by registering at Our Website (as hereinafter defined).

(b) “**Administrator**” means a person who performs administrative functions in connection with an Account. By default, the person who first completes the Account registration process on behalf of an Organization is deemed the initial "Administrator" (and the billing contact) for purposes of such Organization’s use of the Services (as defined below), and exercises certain options to initially determine the level of access, privacy, and security for the Services related to the Organization (“**Administrator Account**”). For example, upon expiration of any trial period, the Administrator may request additional Author and Administrator subaccounts. Also, some of Our Services allow each Administrator to designate other Account users as additional and/or successor Administrators; in that case, each Administrator shall be responsible for confirming that those persons accept such responsibility. In addition, any person designated as the billing contact in the Services billing record for an Organization will be deemed to assume the rights and obligations of an Administrator. For the avoidance of doubt, all Account users must comply in all respects with all terms and conditions applicable to an Account.

(c) “**Apps**” has the meaning set out in Section 7 below.

(d) “**Author**” means a registered user who is authorized to access an Account and is allowed to use the Services.

(e) “**Product**” means any product offered to the public by Company, whether such product is a Company-produced product or a third-party product that Company is authorized to re-sell.

(f) “**Services**” means Company’s services specified in Section 2 below.

(g) “**Website**” means the website located at <http://www.zydoc.com>, its respective sub-domains, and all associated software, feeds, internet-accessible platforms, applications and Services provided therein by Company or its affiliated third parties, agents and subcontractors.

## 2. OUR SERVICES

During the Term, Your Account shall be subject to the following fees, rates and charges in connection with any usage or purchase of Company’s Products and (or) Services as described below:

(a) **Minimum Usage Fee:** Company requires a minimum fee of Fifty dollars (\$50.00 USD) per Author per month for Our Services (the “**Minimum-Usage Fee**”). Accordingly, on the last day of the month, each Account Author shall be billed the greater of the Minimum-Usage Fee or the total amount due based on an Account’s designated *SpeechDoc*™ Plan (as defined below). For the avoidance of doubt, even if an additional Author subaccount is added to an Account after the 1<sup>st</sup> day of the month, that Author’s \$50.00 Minimum-Usage Fee shall not be prorated.

(b) **Free Trial:** While registering on Our Website, an Author may elect to try Our *SpeechDoc*™ Standard Plan free for 14 consecutive days; thereafter, such Author shall be billed for Our Services in accordance with the *SpeechDoc*™ Plan selected by their Account Administrator.

### (c) Definition of Company’s *SpeechDoc*™ Plans:

	<i>SpeechDoc</i> ™ AUTOMATED PLAN	<i>SpeechDoc</i> ™ STANDARD PLAN	<i>SpeechDoc</i> ™ PROFESSIONAL PLAN	<i>SpeechDoc</i> ™ PROFESSIONAL PLUS PLAN
	Ideal for creating unedited, speech-recognized internal documentation	Ideal for creating highly accurate clinical reports and referral letters	Ideal for EHR users needing remote scribes for detailed data entry	Ideal for EHR users with frequent STAT job and U.S. typist requirements
<b>Guaranteed Accuracy</b>	Speaker Dependent – Speech Rec. Only	98%	98.6%	99%
<b>Max. Turnaround Time for Dictations &lt;15 Minutes</b>	Varies	24 Hours	24 Hours	4 Hours
<b>STAT Job Surcharge</b>	N/A	200-300% of Line Rate	200-300% of Line Rate	N/A
<b>Typist Location &amp; Clearance Checks</b>	N/A	Offshore, HIPAA Compliant	U.S. Based, HIPAA Compliant or Offshore, HIPAA Compliant	U.S. Based, HIPAA Certified and Background Checked

<b>Editor Location &amp; Clearance Checks</b>	N/A	U.S. Based, HIPAA Compliant and Background Checked	U.S. Based, HIPAA Compliant and Background Checked	U.S. Based, HIPAA Certified and Background Checked
<b>Letterhead Included</b>	1	1	Up to 2	Up to 6
<b>Job-Type Templates Included</b>	Up to 4	Up to 8	Up to 12	Up to 24
<b>Automated EHR Section-Level Insertion</b>	\$0.025/Line	\$0.025/Line	Included	Included
<b>1-800 Toll Free Dictation Recording</b>	\$0.10/min.	\$0.10/min.	Included	Included
<b>Faxing</b>	\$0.10/page	\$0.10/page	Included	Included
<b>ZyDoc Smartphone Dictation App and Handheld Digital Recorder Submission Software</b>	Included	Included	Included	Included
<b>Telephone or Email Support 24/7/365</b>	Included	Included	Included	Included
<b>HIPAA Security</b>	Included	Included	Included	Included
<b>Closed-Loop Feedback and Quality Assurance Process</b>	Included	Included	Included	Included
<b>Manual Remote Scribe Services</b>	N/A	N/A	Included	Included
<b>Line Rate</b>	\$0.05	\$0.10	\$0.16	\$0.21

(d) A “**Line**” means sixty-five (65) characters, with a fraction of a line rounded up to the next line. A “**character**” means any keystroke necessary for the final appearance and content of a document. For Company’s transcription services, there is a 25-Line minimum per job. A standard page is thirty (30) Lines.

(e) **STAT Jobs:** For *SpeechDoc*™ Standard Account Authors and Professional Account Authors requesting a 4-hour turnaround time for a job, the Line Rate shall be billed at 200% and such job must be designated as being a STAT job *at the time of submission*; jobs submitted without a STAT designation but requested *after submission* shall be billed at 300% of the Line Rate (“**STAT Job Surcharge**”). The return time for a STAT job shall start at

the time of STAT notification and not at the time a job has been received.

(f) Excluding *SpeechDoc*™ Automated Account Authors, the Line Rate shall be increased by 50% for each additional Author on the same dictation file.

(g) At no additional cost, Company offers all Account Authors the following:

- i. Unlimited use of the TrackDoc Connect™ or TrackDoc Flow™ platforms;
- ii. Unlimited use of the TrackDoc Connect™ or TrackDoc Flow™ platforms in connection with any Administrator subaccounts (unless such Administrator is also an Author);
- iii. Unlimited licenses for each of Your locations using the ZyDoc Uploader™ app in connection with TrackDoc Connect™ or TrackDoc Flow™. Company shall not be responsible for providing any digital handheld recorder support in connection with Your usage of the ZyDoc Uploader™;
- iv. Unlimited licenses for each of Your locations using the ZyDoc Downloader™ or other supplied app to enable the printing and sorting of Your files from TrackDoc Connect™ or TrackDoc Flow™; and
- v. No setup fees in connection with establishing Your Account or any subaccounts.

(h) **Letterhead:** At no additional cost, Account Administrators may submit their Organization's letterhead in approved .rtf, .doc or .docx format; if no letterhead has been submitted, Company shall use its default letterhead (at no additional cost). Additional Organization letterheads shall be subject to a one-time only Twenty-five dollar (\$25.00 USD) setup fee (the "**Letterhead Fee**").

(i) **Job-Type Templates:** Additional job-type templates shall be subject to a one-time only Twenty-five dollar (\$25.00 USD) setup fee (the "**Template Fee**").

(j) The following fee shall apply for Your usage of Company's Automated EHR section-level insertion with free Company-portion of EHR interface setup and maintenance during the Term: \$0.025/line (the "**EHR Insertion Fee**"). This EHR Insertion Fee is waived for *SpeechDoc*™ Professional and Professional Plus Account Authors but shall be incurred in addition to any other applicable fees for Automated and Standard Account Authors.

(k) At no additional cost, Professional and Professional Plus Account Authors shall receive **Manual Remote Scribe Services**, which includes faxing, printing, MIPS data entry and section-level EHR data entry to be performed as instructed by the Author's dictations. For the avoidance of doubt, 4-hour turnaround time is not available for any jobs requiring Manual Remote Scribe Services; turnaround time shall be 24 hours.

(l) **Demographics:** Due to HIPAA regulations, Company does not accept patient demographics information via unsecured fax or unencrypted email; Account Authors and (or) Account Administrators must provide demographics information to Company prior to dictations being submitted via HL7 feed, EHR, call reminder or scheduling integration. HIPAA-secure email and faxing shall incur additional charges in Company's sole discretion.

(m) On the anniversary date of the Effective Date, Company may increase the Line Rate by five percent (5%) rounded up to the nearest penny without further notice to You.

(n) The parties hereto agree to mutually renegotiate any pricing in the event of a change in scope of work or any other material change in Services.

### 3. TRANSLATING THIS AGREEMENT

This Agreement is written in English (USA). Company may, but shall have no obligation to, make this Agreement available to You in languages other than English through third-party translation services, such as the Google Translate application. Such translations of any materials into a language other than English are intended solely as a courtesy to You and for the convenience to non-English reading users. Company does not warrant or represent to the accuracy of any such translations in whole or in part, and You acknowledge that such translations may contain differences due to the general difficulty in accurately translating languages. Accordingly, You acknowledge and agree that the English (USA) version of the Agreement shall be the controlling version of the terms and conditions herein in the event of a discrepancy, and shall exclusively govern the entire relationship between Company and You.

### 4. ACCOUNT REGISTRATION AND INFORMATION

(a) As a condition precedent to accessing the Services, You must agree to be bound by this Agreement, as well as the Exhibit B Business Associate Agreement (“**BAA**”), which is attached hereto and made a part hereof.

(b) You must provide Company with accurate and complete information during the registration process, such as: Your legal name, Your email address, Your Organization name (if any), Your mailing address, Your credit card information and Your telephone number to be used in connection with Your account (“**Registration Data**”). Company shall use, store, sell and share Your Registration Data in accordance with Company’s then-current Privacy Policy located on Our Website.

(c) You and all Account users are also required to authenticate Your Account through entering a username and password prior to Your use of the Services. You are solely responsible for any and all activity that occurs on Your Account including, without limitation, unauthorized use of Your Account, and You should notify Company immediately upon any breach of security or suspected unauthorized use of Your Account by emailing [operations@zydoc.com](mailto:operations@zydoc.com).

(d) Through creating an Account or otherwise using the Services, You authorize Company, from time to time in its sole discretion, to communicate with You in order to provide information concerning Your Account or the Services. Company does not and shall not use Your Registration Data for commercial or marketing purposes, except at your request, with your consent, or as part of a program where you may opt-in. Notwithstanding the foregoing, You acknowledge and agree that Company may use Your Registration Data to display advertisements within Your Account.

(e) Company reserves the right to terminate Your Account and/or access to the Services or Apps if it is determined, in Company’s sole discretion, that You have violated the terms and conditions herein, or, for any reason whatsoever, or for no reason. Regardless of Account termination or cancellation, You shall remain liable to Company for all amounts due to Company pursuant to the terms and conditions herein.

### 5. EFFECTIVE DATE, CANCELLATION AND SUBACCOUNTS

(a) This Agreement shall take effect on the date that You first use Your Account login credentials to log in to the Company’s Website (the “**Effective Date**”).

(b) At any time after the Effective Date, any Author or Administrator may submit an Account cancellation notice by emailing [operations@zydoc.com](mailto:operations@zydoc.com). Please include the Author’s registered name and/or Organization name in the subject line. For purposes of Account cancellation, notice of cancellation shall be effective when received by Company.

(c) At any time after the Effective Date, any Account Author or Administrator may request the creation of additional user subaccounts by emailing [operations@zydoc.com](mailto:operations@zydoc.com).

(d) Absent actual knowledge to the contrary, Company shall have the right to assume that anyone who accesses an Organization's Account through an Author subaccount and requests Our Services is an authorized user of the Account, and the Account shall be billed accordingly for Services rendered during the Term (as defined below).

## 6. TERM AND TERMINATION

(a) The term of this Agreement shall commence on the Effective Date and extend for one (1) year (the "**Initial Period**"), unless terminated in writing by You or Company for any reason or no reason with thirty (30) days' notice. Thereafter, the term shall automatically continue beyond the Initial Period for successive one (1) year periods (individually, an "**Option Period**", collectively, the "**Option Periods**") unless terminated in writing by You or Company with thirty (30) days' notice (together with the Initial Period and Option Periods, the "**Term**").

(b) At any time during the Term, You and (or) Your Administrator(s) may cancel Your Account by emailing [operations@zydoc.com](mailto:operations@zydoc.com). Upon termination or expiration of this Agreement, subject to applicable laws, Company shall have no obligation to ensure Your Account data (including, without limitation, Registration Data) is archived by Company. Notice of Account cancellation shall become effective upon receipt by Company and this Agreement shall terminate thirty (30) days thereafter.

## 7. "APP" LICENSE

Company's Services are available in multiple application formats, including, but not limited to, the following: TrackDoc Connect™, TrackDoc Flow™, the TrackDoc™ iPhone App, TrackDoc™ Android App, ZyDoc Uploader™ and ZyDoc Downloader™ (the "**Apps**"). Company hereby grants You a temporary license to download, update, upgrade and use the Apps in accordance with the terms and conditions herein. However, as stated in the preceding sentence, this is a temporary license and You do not own the Apps; you only have a license to use it. Accordingly, Company retains all rights to assign, license and/or sublicense its Apps in its sole discretion.

## 8. INVOICING AND PAYMENT

(a) During the Term, Company shall charge Your Account's payment info on file on the last day of the month (the "**Invoice Date**") for the Minimum-Usage Fees due for the then-current month, plus applicable additional fees, rates and/or charges incurred in accordance with the Services. Subject to applicable usury laws, interest is charged on all past due balances at a compounded rate of one and one-half percent (1.5%) per month. Credit card and direct bank payment accounts are processed automatically on the Invoice Date and You shall be sent (mailed or e-mailed) an invoice as a receipt for payment. Payment adjustments pursuant to the terms and conditions herein (including, without limitation, the Limited Warranty provision) will be reflected on the next invoice and/or in Your payment method account on file. If You dispute any charges on a given invoice other than the Minimum-Usage Fees agreed to, You agree to pay all non-disputed charges and notify Company in writing, no later than fifteen (15) days after the Invoice Date, should You have any questions or issues relating to items billed on any Company-issued invoice; otherwise, all charges shall stand. For the avoidance of doubt, You will not be charged any late fee on any charges reasonably disputed by You in accordance with this Agreement. We accept credit card and checks paid by ACH online. If You prefer to mail Company a physical check to pay an Account invoice, there will be a Ten Dollar (\$10.00 USD) processing fee (the "**Check Processing Fee**").

(b) Unless otherwise stated, all fees, rates, charges and applicable taxes are quoted in U.S. Dollars. All payments must be made electronically by the methods specified within the Service. You agree that Company may charge Your selected payment method for any such fees owed. You are required to keep your billing information current, complete, and accurate (e.g., a change in billing address, credit card number, or expiration date) and to notify Company if Your selected payment method is cancelled (e.g., for loss or theft). All fees and charges are earned upon receipt by Company and are non-refundable (and there are no credits) except (a) as expressly set forth herein, and/or (b) as required by applicable law.

(c) You are responsible for all charges incurred under your Account made by You or anyone who uses your

Account (including without limitation, Your co-workers, colleagues, team-members, etc.). If Your payment method fails or You are past due on amounts owed, Company may collect fees owed using other collection mechanisms in its sole discretion. Your account may be deactivated without notice to you if payment is past due, regardless of the dollar amount. You are also responsible for paying any applicable governmental taxes imposed on your use of the Services, including, but not limited to, sales, use, or value-added taxes. To the extent Company is obligated to collect such taxes, such applicable tax will be added to Your invoices unless Company receives documentation to the contrary such as a tax-exempt certificate or other appropriate documentation stating Our Services are exempt from sales tax. You agree to indemnify, defend and hold Company harmless from any taxes or claims, causes of action, controversies or costs (including, without limitation, costs and attorneys' fees) and any other liabilities of any nature whatsoever related to such taxes.

(d) Your Services will be automatically renewed and your Account credit card (or other payment method on file) will be charged as follows without further authorization from You: (a) every month for monthly subscriptions; (b) upon every one (1) year anniversary for annual subscriptions; and/or (c) such other periodic rates You have selected from among the options offered on the Services. **You acknowledge that Your subscription is subject to automatic renewals and You consent to and accept responsibility for all related recurring charges to Your applicable payment method without further authorization from You and without further notice unless expressly required by applicable law. You acknowledge that the amount of the recurring charge may change if the applicable tax rates change or if there has been a change in the applicable fees.**

(e) Company, at its own discretion, reserves the right to discontinue its Services while Your Account is past due ("**Frozen Account**"). In this event, once the Account becomes current, Company will resume Services, but will not be responsible for meeting its turnaround time commitment specifically for dictations submitted during the Frozen Account period, nor shall it be liable for any damages whatsoever resulting from this delay. However, Company will make reasonable efforts to promptly complete all pending work previously received during the Frozen Account period. If You elect to discontinue Services and do not pay in full within thirty (30) days of such election, Your credit card on file (or any other payment info on file) will continue to be charged interest and/or late fees in accordance with the terms and conditions herein until the balance is paid in full. Company reserves the right to turn delinquent Accounts over to a collection agency and add all related legal and collection costs plus accrued interest to the outstanding balance.

## **9. REFUNDS, PROMOTIONS AND PAYMENT VERIFICATION**

(a) Refunds may be extended in Company's sole and absolute discretion. Refunds shall be issued to the credit or debit card used in connection with registering Your Account or purchasing any Company Products or Services; it should take between seven (7) and fourteen (14) business days for the credit to appear in your account.

(b) Company may, from time to time, offer promotional credits, customized free trials, or rebates in its sole discretion ("**Promotions**"). Promotions extended by Company, or its affiliates, to You are solely for Your own Account's use and are non-transferable.

(c) Subject to applicable laws, Company may use various technologies to verify Your compliance with any of the terms and conditions herein. You expressly consent to Company using any monitoring or other analogous technology associated with monitoring Your Account in Company's sole discretion.

## **10. TAXES**

(a) All fees, rates and charges provided for in this Agreement are exclusive of any taxes, including, without limitation, federal, state, municipal or other governmental excise, sales, use or similar taxes, which taxes (other than taxes related to Company's income) shall be billed to You unless you submit information to Company at [operations@zydoc.com](mailto:operations@zydoc.com) reasonably demonstrating You are not subject to certain taxes. You shall pay all taxes arising as a result of or in connection with any transactions under this Agreement and the Services (and all of Your invoices shall reflect the amount of such taxes [if any]). Taxes are any foreign, federal, national, state, provincial, local, municipal, stamp or other taxes, duties, levies, fees, excises or tariffs or any taxes that now or in



the future may be imposed on You (or third parties with whom You enter into agreements relating to Your undertakings under this Agreement), together with any penalties, interest or any additions thereto.

(b) You agree to indemnify, defend and hold Company harmless from any taxes or claims, causes of action, controversies or costs (including, without limitation, costs and attorneys' fees) and any other liabilities of any nature whatsoever related to such taxes. If taxes are imposed on Company by law because of this Agreement, Company shall invoice You in an equal amount and You shall pay the invoice within thirty (30) days of receipt.

## **11. TECHNICAL SUPPORT**

Subject to the terms and conditions herein, Company will, during its normal business hours, provide software support ("**Software Support**" as defined below) solely for the Apps supplied by Company to You. Software Support shall mean advice by telephone, email or via the Websites following receipt of a request from Client to diagnose faults in the Company software, and to rectify such faults (remotely or by attendance on site as determined by Company in its sole discretion). Company reserves the right to add support for any new Services and Company software, or discontinue support for existing Company Software in its sole discretion and with or without notice to You. Company shall not be responsible for ensuring continuing support for any software that You are using in connection with the Services not supplied by Company. If You wish to utilize Company's IT support technicians for a matter unrelated to Software Support, You may do so by entering into a separate service agreement with Company. Our IT support technicians are available at One Hundred and Sixty Dollars (\$160.00 USD) per hour, with a fifteen (15)-minute minimum engagement.

## **12. THIRD PARTY CONTENT AND SOFTWARE**

(a) The Website, Apps and/or Services may contain visual advertisements or links to third party content, including, without limitation, other websites ("**Content**"), for the convenience of visitors or for third party advertising purposes, which Company has not reviewed. Therefore, Company linking to third party Content does not imply an advertisement or endorsement of any particular service, product, or otherwise, provided solely by such third party. Company is not responsible for any third party Content linked to or from the Services and expressly disclaims, without limitation, any responsibility for any third party Content, the accuracy of any information found on any third party web site, or the quality of products and/or services provided by or advertised on such third party websites. Your use of any third party Content is at Your own risk, and subject to the terms and conditions of such third party's website. Notwithstanding the foregoing, some Content from certain business partners' products and (or) services featured on the Website, Apps and/or Services may in fact be endorsed by Company, in which case such Content shall be accompanied by language explicitly endorsing it.

(b) The Website, Apps and/or Services may utilize third party software, including, without limitation, other internet-accessible platforms, in connection with providing any or all of Company's Services. Accordingly, Company's use of third party software does not imply an advertisement or endorsement of any service, product, or otherwise, provided solely by such third party. Company is not responsible for any third party software used by You in connection with the Services and expressly disclaims, without limitation, any responsibility for any third party software, the reliability of any information found on any third party web site, or the quality of products or services provided by or advertised on such third party software. Your use of any third party software is at Your own risk, and subject to the terms and conditions of such third party's terms of service and/or privacy policy.

## **13. USE OF OUR SERVICES**

Subject to Your full compliance with all terms and conditions herein and full payment of all fees and charges pursuant to Your use of the Services, Company grants You permission to access and use the Services. Company reserves the right, in Company's sole discretion, to change any aspect of how it operates the Services at any time and for any reason whatsoever. Generally, You may access computer files on, and submit computer files to, the Services. Accordingly, You are solely responsible for Your use of the Services and for the computer files submitted and received by You, and/or other user-generated content You may submit to (or receive from) the Services and/or Website and/or Apps.



## 14. WEBSITE ACCESSABILITY AND COMPLIANCE

Company makes no representation whatsoever that the Website, Services and/or Apps are accessible in all locations. Any person who accesses the Website, Services, Apps and/or their Account does so at their own volition and You shall be solely responsible for compliance with all applicable laws, ordinances and statutes.

## 15. INTELLECTUAL PROPERTY

### (a) Company Content

(i) As between You and Company, Company owns, licenses, or is authorized to use or exploit all audio, video, images, software, text, scripts, artwork, trademarks, service marks, data, proprietary rights, and other materials, including, without limitation, the selection, coordination, arrangement, and organization of all material, found on the Website, Services and Apps (the "**Company Content**"). For the avoidance of doubt, the foregoing does not imply that Company owns the copyright in or to any user-generated computer files ("**Client Content**") and Company acknowledges that the Author of such Client Content is the exclusive owner of the same and Company's rights thereto are a non-exclusive license as contemplated by this Agreement.

(ii) The Website, Apps, Services and Company Content are protected by and subject to various laws, including, without limitation, the United States Copyright Act, the Lanham Act, various international conventions and treaties, and other applicable international copyright, trademark, and intellectual property laws. Third parties and not Company may hold copyright, trademark, and other proprietary rights in and to certain Company Content. You shall not copy, capture, reproduce, remove, perform, transfer, sell, license, modify, manipulate, create derivative works from or based upon, republish, upload, edit, post, transmit, publicly display, frame, link to, distribute, or exploit, in whole or in part, the Website, Services, Company Content or Client Content, unless otherwise explicitly permitted by these terms and conditions, by the Company or by any applicable laws. Any unauthorized activities that infringe upon the intellectual property rights of Company, or its affiliates (such as third party content providers), is expressly prohibited and all rights in and to the Company Content are expressly reserved by the Company. Nothing contained in these terms and conditions shall be construed as granting, by implication or otherwise, any license or right to use any Company Content whatsoever without the express written permission of Company, or its affiliates. Any unauthorized use of the Content, except as explicitly authorized by these terms and conditions, is strictly prohibited and may subject You to civil liability under U.S. and international copyright laws, trademark laws, the laws of publicity or privacy, and other civil and criminal statutes, rules, or regulations.

### (b) User Materials

(i) By submitting biographical information, logos, photographs, client testimonials, audio, and/or video files (collectively, "**User Materials**"), through the Services or directly to Company, You hereby grant Company, its subsidiaries and its affiliates, a worldwide, non-exclusive, perpetual, royalty-free license to access, advertise, display, exhibit, perform, promote, use, view, and otherwise exploit the User Materials exclusively in connection with the Services and its advertisement, and to use Your User Materials and/or name and/or likeness either alone or in association with Company's trademarks or service marks in order to promote Company's Website, Apps and Services and to denote You as a "ZyDoc Client". Company's aforementioned rights in the User Material shall continue in perpetuity absent Your notice to Company in writing (email shall suffice for such purposes) that You no longer wish to be listed on the Website and/or Apps. However, notwithstanding the foregoing, Company shall have, and You hereby grant Company, a perpetual non-exclusive license to Your name and likeness for archival purposes and to display it on any portion of its Website that lists prior ZyDoc clients. Notwithstanding the foregoing, Company shall not use any of Your protected healthcare information ("**PHI**") related to the User Materials in any manner that violates any applicable laws, including without limitation, HIPAA.

## 16. NO ENDORSEMENT OF YOUR CONTENT

Company does not endorse, nor offer any opinions whatsoever, on any Client Content submitted to the Services by You, nor does Company endorse or offer any opinions whatsoever on the content contained therein.

## 17. COMPLIANCE WITH DIGITAL MILLENIUM COPYRIGHT ACT

Our Company is committed to complying with all applicable U.S. copyright and related laws, and requires that You comply with these laws as well. It shall be assumed by Company that You are the copyright holder (or You have authorization from the copyright holder) to submit Your Client Content and User Materials to Company. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 ("**DMCA**") to report alleged infringements. A copyright owner of any content believed to be infringed should contact Company immediately to report any concerns of infringement by providing notice to Company's Designated Agent as required by the DMCA, Title 17 U.S.C. § 512. Such notice must be provided by email to Company at the following address, [operations@zydoc.com](mailto:operations@zydoc.com), but you may also simultaneously send such notice to Company via mail at the following address: ZyDoc attn.: Designated Copyright Agent, 1455 Veterans Memorial Highway, Islandia, NY 11749. Such notice shall be deemed effective upon receipt by Company and must include, at a minimum:

- (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (b) the identification of the copyrighted work claimed to have been infringed;
- (c) the identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit us to locate the material;
- (d) information reasonably sufficient to permit Company to contact you, such as an address, telephone number, and, if available, an e-mail address;
- (e) a statement that you have a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and
- (f) a statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

For clarity, only DMCA notices should go to the Designated Copyright Agent; any other general communications should be directed to Company at: [operations@zydoc.com](mailto:operations@zydoc.com). You acknowledge that if you fail to comply with all of the requirements of this section, your DMCA notice may not be valid.

If you believe that your content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner or the copyright owner's agent, or pursuant to the law, to post and use such Content, You may send a DMCA counter-notice to Company's Designated Copyright Agent containing the following information:

- (i) Your physical or electronic signature;
- (ii) the identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- (iii) a statement that You have a good-faith belief that the content was removed or disabled as a result of a mistake or a misidentification of the content, and any relevant proof related to the same; and

(iv) Your name, address, telephone number and e-mail address, a statement that You consent to the jurisdiction of New York County, New York and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by Company's Copyright Agent, Company is permitted to and may send a copy of the counter-notice to the original complaining party informing that person or entity that the removed content may be replaced or no longer disabled in ten (10) business days. Unless the copyright owner files an action seeking a court order against the content provider or user in the next fourteen (14) business days after receipt of the counter notice, the removed content may be replaced, or access to it restored, in Company's sole discretion.

## **18. POSTINGS**

The Website, and/or any social media pages controlled and/or owned by the Company that are accessible directly through the Website (each, a "**ZyDoc Social Media Page**"), may contain blogs, message boards, comment areas and other interactive features and functionality where users may post certain information and content (collectively, "**Forum**"). To the extent the Website and/or any ZyDoc Social Media Page contains any such Forum, You hereby acknowledge and agree that when using the Website and/or any ZyDoc Social Media Page, You shall not upload, post, display, or transmit any of the following materials on any Forum:

- anything that, in ZyDoc's sole discretion, interferes with or disrupts the operation of the Sites and/or ZyDoc Social Media Page
- statements or material that defames, harasses, abuses, stalks, threatens, intimidates, or in any way infringes on the rights of others in Company's sole discretion
- unauthorized copyrighted materials or any other material that infringes on the intellectual property rights, trade secrets, or privacy of others
- statements or material that encourages criminal conduct or that would give rise to civil liability or otherwise violates any law or regulation in any jurisdiction
- statements or material that contains vulgar, obscene, profane, or otherwise objectionable language or images that typically would not be considered socially or professionally responsible or appropriate in person
- statements or material that impersonates any other person or entity, whether actual or fictitious, including, without limitation, employees and representatives of Company
- statements or material that misrepresents your affiliation with any entity and/or Company
- statements or material that constitutes junk mail, spam, or unauthorized advertising or promotional materials
- statements or materials that are "off-topic" for a designated Forum.

## **19. NOTICE TO CALIFORNIA RESIDENTS**

Pursuant to California Civil Code Section 1789.3, California residents are entitled to the following specific consumer rights notice which is hereby offered as a convenience to you:

The name and address of the provider of the Services is ZyDoc Medical Transcription, LLC, 1455 Veterans Memorial Highway, Islandia, NY 11749. Complaints regarding the Services or requests to receive further information regarding use of this Service may be sent to the above address or to [operations@zydoc.com](mailto:operations@zydoc.com) by e-mail. The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Boulevard, Suite S202, Sacramento, CA 95834 or by telephone at (916) 574-7950 or (800) 952-5210.

## **20. COMPANY WARRANTY AND LIMITATION OF LIABILITY**

(a) Company warrants and represents that the Services performed will be performed in a good and workmanlike manner. Company will, at its sole discretion, either re-perform its Services or, in its sole discretion, refund charges for any unsatisfactory work claimed and substantiated by Client. Corrections may be requested when Client reviews Services provided by Company. Company will make reasonable efforts to re-perform any Services

brought to Company's attention within a reasonable time, but in no event more than thirty (30) days after such Services are performed, which shall be an exclusive remedy for such noncompliance under this Agreement. Accordingly, while Company takes the utmost care in performing its Services, it is the responsibility of the Client for the final accuracy of any work. Company reserves the right, without obligation, to return or reject any Author-submitted dictations submitted to Company through the Websites, Services or Apps in part or in whole, and for any reason or no reason. **THE LICENSED SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND COMPANY DOES NOT MAKE ANY WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (THE "LIMITED WARRANTY"). COMPANY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES AND SHALL HAVE NO LIABILITY WHATSOEVER RESULTING FROM ANY MALPRACTICE OR ANY OTHER LEGAL CLAIMS AGAINST THE PERSON RESPONSIBLE FOR PROVIDING DICTATION OR OTHER DATA, CLIENT'S PRACTICE, AFFILIATES, OR EMPLOYER. IN NO EVENT SHALL COMPANY BE LIABLE TO CLIENT OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FOR LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT, LOST PROFITS, OR SIMILAR ECONOMIC LOSS OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, DIRECT, INDIRECT OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION INCLUDING BUT NOT LIMITED TO, ACTIONS FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, RESCISSION, MALPRACTICE, AND BREACH OF WARRANTY WHETHER IN CONTRACT, TORT OR OTHERWISE, (IN)DIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ITS EXHIBITS AND ORDER FORMS (IF ANY), EVEN IF COMPANY HAS BEEN ADVISED OF SUCH CLAIMS. ACCORDINGLY, COMPANY'S AGGREGATED LIABILITY FOR ONE OR MORE OF THE AFOREMENTIONED CLAIMS MADE BY YOU AND/OR ANY OF YOUR AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FOR ANY CLAIMS RELATED TO OR ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION INCLUDING, BUT NOT LIMITED TO, ACTIONS FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, RESCISSION, MALPRACTICE, AND BREACH OF WARRANTY, SHALL NOT EXCEED THE TOTAL FEES PAID AND/OR PAYABLE UNDER THIS AGREEMENT AND/OR ANY SUBSEQUENT AGREEMENTS ENTERED INTO BY BOTH PARTIES DURING THE MONTH IMMEDIATELY PRECEDING MONTH WHEN THE CAUSE OF ACTION AROSE OR ONE-HUNDRED DOLLARS (\$100.00 USD), WHICHEVER IS LESS. COMPANY SHALL UNDER NO CIRCUMSTANCES BE RESPONSIBLE FOR, WITHOUT LIMITATION, YOUR SOFTWARE, DATA, SYSTEMS OR CONNECTIVITY AND SHALL NOT ASSUME ANY LIABILITY FOR YOUR COMPUTER SYSTEMS OR OPERATIONS.** Unless otherwise noted herein or in contravention of applicable HIPAA laws and regulations, the parties hereto acknowledge and agree that Company shall have no obligation to remove, delete, preserve, maintain or otherwise safeguard any information, images or content retained by, in or on any item of equipment indirectly or directly controlled by Company before, during or after the Term, whether through a digital storage device, hard drive or similar electronic medium such as a cloud system. If desired, You may engage Company to perform such professional services at its then-current rates by emailing [operations@zydoc.com](mailto:operations@zydoc.com). Notwithstanding anything to the contrary herein: (i) You are solely responsible for ensuring Your own compliance with any and all applicable legal requirements pertaining to data retention and protection; (ii) it is Your sole responsibility to obtain advice of competent legal counsel as to the identification and interpretation of any relevant laws and regulatory requirements that may affect Your business or data retention, and any actions required to comply with such laws; (iii) **COMPANY DOES NOT PROVIDE LEGAL ADVICE OR REPRESENT OR WARRANT THAT ITS SERVICES OR PRODUCTS OFFERED WILL GUARANTEE OR ENSURE COMPLIANCE WITH ANY LAW, REGULATION OR REQUIREMENT;** and (iv) the selection, use and design of any Company Services, and any and all decisions made with respect to the deletion or storage of any data, as well as any loss of data resulting therefrom, shall be Your sole responsibility. Company offers and recommends encryption related to the transmission of data for the provision of its Services. If You do not use encryption, You are responsible for any and all resulting liability caused by failing to encrypt such information. For the sake of clarity, this Limited Warranty shall survive the termination or expiration of this Agreement.

(b) Neither the Company, nor its subsidiaries, agents, subcontractors and affiliates, nor any third-party data provider (for purposes of indemnification, warranties, and limitations on liability, the Company, its subsidiaries and affiliates, and its data providers are hereby collectively referred to as "**Released Parties**") shall be liable to You (or to any person claiming through You to whom You may have provided data that You obtained from the Company as a result of using Company's Sites, Apps and/or Service) for any loss or injury arising out of or caused, in whole or in part, by the Released Parties' acts or omissions in procuring, compiling, collecting, interpreting, reporting, communicating, or delivering the Service made available to You by the Company. The Released Parties do not make and hereby disclaim any warranty, express or implied, with respect to the Service, Sites or Apps. The Released Parties do not guarantee or warrant the correctness, completeness, merchantability, or fitness for a particular purpose of its Service, Sites or Apps, or any information provided therein. In no event shall the Released Parties be liable for any indirect, incidental, or consequential damages, however arising, incurred by You from receipt or use of information delivered hereunder or the unavailability thereof.

(c) In addition to Section 20(b) hereof, You expressly absolve and release the Released Parties from any claim of harm resulting from any cause beyond the Released Parties' reasonable control, including, but not limited to, failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, computer viruses, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, strikes, or other labor problems, wars, or governmental restrictions.

(d) YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE RELEASED PARTIES SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, AND/OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), TO THE FULLEST EXTENT PERMISSIBLE BY LAW FOR: (A) THE USE OR THE INABILITY TO USE THE WEBSITE, APPS OR SERVICES; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, CONTENT AND/OR ANY SERVICE PURCHASED OR OBTAINED FROM OR THROUGH THE SITES OR APPS; (C) THE UNAUTHORIZED ACCESS TO, OR ALTERATION OF, YOUR PERSONALLY IDENTIFIABLE DATA; AND (D) ANY OTHER MATTER RELATING TO THE SERVICES, WEBSITE OR APPS.

(e) Some states in the U.S. do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation(s) or exclusion(s) may not apply to You. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND ANY AND ALL OTHER TORTS. YOU HEREBY RELEASE COMPANY FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THE LIMITATIONS STATED HEREIN. IF APPLICABLE LAW DOES NOT PERMIT ANY SUCH LIMITATION OF LIABILITY ASSET FORTH ABOVE, THE MAXIMUM LIABILITY OF THE RELEASED PARTIES TO YOU UNDER ANY AND ALL CIRCUMSTANCES WILL BE ONE-HUNDRED DOLLARS (\$100.00 USD). NO ACTION, REGARDLESS OF FORM, ARISING OUT OF YOUR USE COMPANY'S SITES, APPS AND/OR SERVICE MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR FOLLOWING THE DATE OF THE EVENT WHICH GAVE RISE TO THE CAUSE OF ACTION. THE NEGATION OF DAMAGES SET FORTH ABOVE IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN YOU AND COMPANY. ACCESS TO THE WEBSITE, APPS AND/OR SERVICE WOULD NOT BE PROVIDED TO YOU WITHOUT SUCH LIMITATIONS. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS ON LIABILITY AND IN SUCH JURISDICTIONS THE COMPANY'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## **21. INDEMNIFICATION**

You agree to defend, indemnify, and hold Company, its successor and assigns, harmless from any and all claims, actions or demands, including reasonable legal and accounting fees, costs and expenses, made by any person or entity arising from, relating to or resulting from Your violation of Company's copyright policy, privacy rights,



these terms and conditions herein, or any other unlawful action. Company will notify You of any such claims and may, but shall have no obligation to, assist in the defense in a cursory manner; however, You shall remain solely liable for all fees, costs and expenses thereof. In some cases Company may, in its sole discretion, assume exclusive defense and control of any such matter, in which case You agree to cooperate with any reasonable requests to assist with Company's defense.

## **22. ELECTRONIC SIGNATURE**

You acknowledge and agree that by agreeing to this Agreement electronically You are expressly agreeing to the terms and conditions set forth herein. You acknowledge and agree that by affixing Your electronic signature You are submitting a legally binding electronic signature and entering into a legally binding contract. You acknowledge that your electronic submission constitutes Your agreement and intent to be bound by the terms and conditions of this Agreement. Pursuant to any applicable statutes, regulations, rules, ordinances or other laws, including without limitation the United States Electronic Signatures in Global Commerce Act, P.L. 106-229 (the "**E-Sign Act**") or other similar statutes, **YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED THROUGH THE SERVICES OFFERED BY COMPANY, INCLUDING, WITHOUT LIMITATION, USING YOUR ELECTRONIC SIGNATURES ON TRANSCRIBED DOCUMENTS.**

## **23. ACCOUNT TERMINATION BY COMPANY AND ARCHIVED DATA REQUESTS**

**(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREOF, COMPANY MAY IMMEDIATELY TERMINATE THIS AGREEMENT AND YOUR ACCESS TO THE WEBSITE, SERVICES AND/OR APPS AT ANY TIME WITHOUT PRIOR NOTICE OR ANY LIABILITY WHATSOEVER IN THE EVENT WE SUSPECT YOUR VIOLATION OF ANY TERMS AND CONDITIONS HEREIN. IN SUCH CASE, YOU SHALL RECEIVE NO REFUND WHATSOEVER, AND, SUBJECT TO APPLICABLE LAW, WE SHALL HAVE NO OBLIGATION TO ENSURE YOUR ACCOUNT DATA (INCLUDING, WITHOUT LIMITATION, YOUR REGISTRATION DATA) IS ARCHIVED OR STORED BY US; ACCORDINGLY, YOUR ACCOUNT DATA MAY IMMEDIATELY BE PERMANENTLY DELETED IN WHOLE OR IN PART.**

**(b) COMPANY RESERVES THE RIGHT TO CHARGE YOU A FEE FOR FULFILLING YOUR REQUESTS FOR ARCHIVED COPIES OF YOUR ACCOUNT DATA.**

## **24. NO MODIFICATION**

Company and You may modify or amend these terms and conditions solely in a writing signed by both parties.

## **25. DISPUTE RESOLUTION AND CLASS ACTION WAIVER**

(a) Before filing any claim against Company (including any claim against any agent, employee, subsidiary, affiliate, predecessor in interest, successor, or assign), its parents, affiliates, subsidiaries or related companies, You agree to make best efforts to resolve Your dispute by first emailing [operations@zydoc.com](mailto:operations@zydoc.com) with a reasonably detailed description of each claim. Company shall try to resolve Your dispute informally by following up with You via email, phone or other methods. If Company cannot resolve the dispute within thirty (30) days of receipt of Your first email regarding any claim, You or Company may initiate binding arbitration pursuant to the provisions set forth below.

(b) Notwithstanding Section 25(f) below, You agree to resolve any claims, including, without limitation, tort and contract claims, claims based upon any applicable federal, state or local statute, law, order, ordinance or regulation, and the issue of arbitrability, arising from or relating to Company's Website, Apps, Services or this Agreement exclusively through final and binding arbitration. Accordingly, **YOU ACKNOWLEDGE AND AGREE THAT ANY SUCH CLAIMS SHALL BE BROUGHT SOLELY IN YOUR INDIVIDUAL**

**CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE PROCEEDING, OR PRIVATE ATTORNEY GENERAL CAPACITY. YOU FURTHER AGREE THAT THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE INDIVIDUAL'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. YOU VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT YOU MAY HAVE TO A JURY TRIAL. ANY CONTROVERSY CONCERNING WHETHER A DISPUTE IS ARBITRABLE SHALL BE DETERMINED BY THE ARBITRATOR AND NOT BY ANY COURT OF LAW.**

(c) An arbitration must be commenced by filing a demand for arbitration within one (1) year after the date the party asserting the claim(s) first knew or reasonably should have known of the act, omission or default giving rise to the claim(s); otherwise, such claim(s) shall be forever barred. If applicable law prohibits a one (1) year limitation period for asserting claims, any claim(s) must be asserted within the shortest time period permitted by applicable law.

(d) The American Arbitration Association (“AAA”) shall administer the arbitration in accordance with the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) in effect at the time the demand for arbitration is filed. If the AAA is unavailable or refuses to arbitrate the parties' claims for any reason, the arbitration shall be administered and conducted by a widely-recognized arbitration organization that is mutually agreeable to the parties, but neither party shall unreasonably withhold their consent. The AAA Rules are available online at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. You and Company agree that this agreement to arbitrate is made pursuant to a transaction in interstate commerce, so its interpretation, application, enforcement and proceedings hereunder shall be governed exclusively by the U.S. Federal Arbitration Act (the “FAA”) and applicable federal arbitration law (despite the governing law provision in Section 32 hereto). All arbitration hearings shall take place at a location to be mutually agreed upon exclusively in the City of New York, New York, USA, in English, and shall be settled by one (1) commercial arbitrator with experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of AAA arbitrators in accordance with the AAA Rules. Despite the foregoing, in the event the total amount of Your or Company’s claim(s) does (do) not exceed Two Thousand Five Hundred (\$2,500.00 USD) U.S. dollars, the arbitration may proceed telephonically (if mutually agreed upon by the parties).

(e) In the event both parties are unable to mutually approve an arbitrator, a neutral arbitrator shall be selected in accordance with the then-current AAA Rules for the selection of neutral arbitrators. The arbitrator must follow this Agreement and shall be entitled to award the same damages and relief as a court of competent jurisdiction (including without limitation reasonable attorneys' fees and costs), except that the arbitrator may not award declaratory or injunctive relief benefiting anyone but the parties to the arbitration. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction and the prevailing party shall be entitled to receive its attorneys’ fees, expenses and costs incurred from said arbitration. The parties and any other arbitration participants shall hold the existence, content and result of such arbitration in confidence. If informal means of dispute resolution are used, all communication shall remain privileged and confidential, and is not subject to discovery or admissible in evidence unless expressly waived or precluded under applicable law.

(f) Prior to engaging in an arbitration or the informal dispute resolution process described above, You or Company may immediately bring a lawsuit in a court of competent jurisdiction for injunctive relief to stop unauthorized use or abuse of the Website, Apps, Services, or intellectual property infringement or misappropriation (for example, trademark, trade secret, copyright or patent rights) and any court of competent jurisdiction shall be authorized to enforce such relief.

(g) If the agreement to arbitrate above is found not to apply to You or Your claim(s) by an arbitrator, You and Company agree that all judicial proceedings between us (including, without limitation, small claims actions) must be brought exclusively in the federal or state courts of New York, New York, and You and Company consent to venue and personal jurisdiction exclusively in those courts. Any claim(s) not subject to arbitration must be commenced within one (1) year after the date the party asserting the claim first knows or reasonably should know



of the act, omission or default giving rise to the claim. If applicable law prohibits a one-year limitation period for asserting claims, any claim(s) must be asserted within the shortest time period permitted by applicable law. The prevailing party in any judicial proceedings (including, without limitation, small claims actions) between us shall be entitled to receive its attorneys' fees, expenses and costs incurred from said arbitration

(h) Separate and apart from the agreement to arbitrate set forth above, You hereby waive any right to bring any claim(s) as a plaintiff or a class member in a class action, class arbitration, private attorney general action, consolidated or representative action or arbitration in any way related to, or arising from, this Agreement. You acknowledge that the aforementioned class action waiver is material and essential to the arbitration of any dispute(s) between You and Company and is non-severable from the above agreement to arbitrate any claim(s). If any portion of this class action waiver section is limited, voided, or cannot be enforced by an arbitrator, the parties' agreement to arbitrate shall not be null and void. **YOU UNDERSTAND THAT BY AGREEING TO THE TERMS AND CONDITIONS HEREIN, WHICH CONTAIN THIS CLASS ACTION WAIVER, YOU MAY ONLY BRING CLAIMS AGAINST COMPANY, ITS AGENTS, OFFICERS, SHAREHOLDERS, MEMBERS, EMPLOYEES, SUBSIDIARIES, AFFILIATES, PREDECESSORS IN INTEREST, SUCCESSORS AND/OR ASSIGNS IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. IF YOU DO NOT AGREE TO THIS ARBITRATION AGREEMENT AND CLASS ACTION WAIVER, YOU MUST NOT USE OUR WEBSITE, APPS OR SERVICES.**

## **26. ENTIRE AGREEMENT; WAIVER OF PAROLE EVIDENCE**

These terms and conditions herein are final and have been completely integrated. There are no other promises or conditions in any other agreements whether oral or written, pertaining to the terms and conditions herein, and no parole evidence may be introduced to the contrary in any action, arbitration, suit or proceeding arising under or relating to this Agreement.

## **27. ASSIGNMENT RIGHTS**

Company shall have the right to assign its rights hereunder in whole or in part to any subsidiary, affiliate or wholly or partially controlled corporation or other similar business entity, or to any other person or entity in its sole discretion. You shall have no right to assign Your rights or obligations hereunder in whole or in part to any other person or entity.

## **28. SUCCESSORS AND ASSIGNS**

This Agreement shall apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of Company and You. Nothing expressed or referred to in this Agreement shall be construed to give any person or entity other than Company or You any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as may inure to a successor or permitted assignee pursuant to this Agreement.

## **29. SEVERABILITY**

Company has attempted to limit the scope of the Agreement to the extent necessary to protect legitimate business and property interests. If any provision of the terms and conditions herein is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue to be valid and enforceable.

## **30. RULES OF CONSTRUCTION**

This Agreement shall be interpreted without regard to any rule of law or equity providing for strict construction of a document against the party responsible for its drafting. The parties agree that they have each equally participated in the drafting of this Agreement and that no ambiguities herein contained shall be construed against a party on the basis that such party was responsible for drafting.

### **31. NO WAIVER OF RIGHTS OR MODIFICATION**

The failure of either party to enforce any provision of these terms and conditions shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision herein. No modification, amendment, waiver, termination or discharge of this Agreement shall be binding unless in writing, signed by Company and You, and expressly stated to be a modification of this Agreement.

### **32. GOVERNING LAW**

The validity and interpretation of this Agreement shall be construed solely in accordance with the laws of the State of New York governing contracts wholly executed and performed therein, without giving effect to its conflict of law principles.

### **33. HEADINGS; REFERENCES**

The captions of provisions of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement. References to a "Section" when used without further attribution will refer solely to the particular provision of this Agreement.

### **34. FORCE MAJEURE**

Company shall not be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation, act of war, civil insurrection, acts of God, earthquake, flood, typhoon, hurricane, tornado, volcanic eruption, solar conjunction, celestial event, solar event, atmospheric disturbance, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet or a satellite.

### **35. RELATIONSHIP OF PARTIES**

The parties hereto are independent of each other and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Vendor and Customer. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

### **36. COUNTERPARTS**

This agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall constitute one and the same instrument. In addition, a signed copy of this agreement transmitted by facsimile or scanned into an image file and transmitted via email shall, for all purposes, be treated as if it were delivered containing an original manual signature of the party whose signature appears thereon and shall be binding upon such party as though an originally signed document had been delivered.

### **37. RIGHT TO SEEK INDEPENDENT COUNSEL**

**THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PARTIES HERETO EACH FULLY UNDERSTAND THE TERMS OF THIS AGREEMENT AND THAT EACH PARTY HAS BEEN ADVISED OF THE SIGNIFICANT IMPORTANCE OF RETAINING AN INDEPENDENT ATTORNEY OF ITS CHOOSING TO REVIEW THIS AGREEMENT ON ITS BEHALF. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY HAVE HAD THE UNRESTRICTED OPPORTUNITY TO BE REPRESENTED BY AN INDEPENDENT ATTORNEY. IN THE EVENT OF EITHER PARTY'S FAILURE TO OBTAIN INDEPENDENT COUNSEL OR WAIVER THEREOF, THE PARTIES HEREBY WARRANT AND REPRESENT THAT SUCH PARTY WILL NOT ATTEMPT TO USE SUCH FAILURE AND/OR WAIVER AS A BASIS TO AVOID ANY OBLIGATIONS UNDER THIS AGREEMENT, OR TO INVALIDATE THIS**

EXHIBIT A

**BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT (“BAA”)** is entered into by and between ZyDoc Medical Transcription, LLC, a New York State Limited Liability Company located at 1455 Veterans Memorial Highway, Islandia, NY 11749 (“**Business Associate**”) and you, an individual who is at least 18 years of age (“**Covered Entity**”), for the purposes of complying with the privacy and security regulations issued by the United States Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and its implementing regulations, including the Privacy Rule, the Security Rule and the Breach Notification Rule (each as defined below), and subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§17921-17954 (the “**HITECH Act**”), each as may be amended from time to time. If Covered Entity is entering into this BAA on behalf of a company, entity, partnership or organization (“**Organization**”), then such individual represents and warrants that it (i) is an authorized representative with the authority to bind such Organization to this BAA; (ii) has read this BAA; (iii) understands this BAA in its entirety and (iv) agrees to this BAA on behalf of such Organization. This BAA shall be effective as of the date Covered Entity accesses, browses, contributes to, views, registers with, interacts with, begins to install or otherwise uses Company’s Services, whichever is earliest (the “**Effective Date**”). Covered Entity and Business Associate may hereafter each be referred to as a “**Party**”, and collectively as the “**Parties.**” The Parties hereto have entered into a Terms of Service Agreement (“**Agreement**”) of which this BAA is a part.

**ACCEPTANCE OF THIS BAA**

**WHEREAS**, Covered Entity is a “covered entity” as such term is defined under HIPAA and, as such, is required to comply with the requirements thereof regarding the confidentiality, privacy and security of certain individual health information; and

**WHEREAS**, Covered Entity has agreed (or may agree) to Business Associate’s Agreement, pursuant to which Business Associate will render Services to, for, or on behalf of Covered Entity or any entities controlling, under common control with or controlled by it; and

**WHEREAS**, by providing the Services according to the Agreement, Business Associate shall become a “business associate” of Covered Entity as such term is defined under HIPAA at 45 CFR Section 160.103.

**NOW THEREFORE**, in consideration of these premises and the mutual covenants set forth hereinafter and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**1. DEFINITIONS**

- 1.1.** Unless otherwise specified, all capitalized terms used and not otherwise defined herein shall have the meanings established by HIPAA, the HITECH ACT and HIPAA regulations as in effect, or as amended from time to time.
- 1.2.** “**Access**” or “**Accessing**” means to create, collect, receive, acquire, record, consult, alter, use, process, store, retrieve, maintain, disclose, or dispose of.
- 1.3.** “**Applicable Laws**” means all privacy, data security, and data protection laws, directives, regulations, and rules in any jurisdiction applicable to the Parties.

- 1.4. **“Breach”** means the acquisition, access, use or disclosure of PHI (as defined below) in a manner not permitted by the HIPAA Privacy & Security Rules that compromises the security or privacy of the PHI (as defined below), except where an unauthorized person or entity to whom the information is disclosed would not reasonably have been able to retain such information.
- 1.5. **“Breach Notification Rule”** shall mean the Standards for Notification in the Case of Breach of Unsecured Protected Health Information at 45 CFR Part 164, Subpart D.
- 1.6. **“Business Associate”** means any entity controlling, controlled by or under common control with Business Associate and each of Business Associate’s contractors that create, receive, maintain, or transmit PHI (as defined below) on behalf of Business Associate.
- 1.7. **“Designated Record Set”** or **“DRS”** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.B. **“Information”** shall mean any “health information” as defined in 45 CFR Section 160.103.
- 1.8. **“includes”** or **“including”** means “including but not limited to”.
- 1.9. **“Individual”** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Sections 164.501 and 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
- 1.10. **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.11. **“Protected Health Information”** or **“PHI”** shall have the meaning ascribed to this term in 45 CFR Sections 164.501 and 160.103, and is limited to the information created or received by Business Associate from or on behalf of Covered Entity. PHI shall also include all PHI that is transmitted or maintained in electronic media.
- 1.12. **“reasonable”** means reasonable and appropriate to: (i) the size, scope, and complexity of a Party’s business; (ii) the nature of the PHI being Accessed; and (iii) the need for privacy, confidentiality, and security of the PHI.
- 1.13. **“Required by Law”** shall have the meaning ascribed to this term in 45 CFR Sections 164.501 and 164.103.
- 1.14. **“Secretary”** shall have the meaning ascribed to this term in 45 CFR Section 160.103.
- 1.15. **“Security Incident”** shall mean successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system and involves only unsecured PHI that is created, maintained or transmitted by or on behalf of Business Associate in electronic form.
- 1.16. **“Security Rule”** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160, Part 162 and Part 164, Subparts A and C, including the requirements of the final modifications as issued on January 25, 2013, and the implementing regulations related to privacy, security, breach notification and enforcement, as amended from time to time.
- 1.17. **“Unsecured PHI”** shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary (e.g., encryption). This definition applies to both hard copies of PHI and electronic PHI. The Secretary of HHS is required to provide annual guidance on appropriate methods and standards of encryption that will apply to Covered Entities and Business Associates.

## 2. RESPONSIBILITIES OF BUSINESS ASSOCIATE

- 2.1 Permitted Uses and Disclosures.** Except as otherwise provided in this BAA, Business Associate, its directors, officers, subcontractors, employees, affiliates, agents and representatives shall use or disclose PHI only as necessary in connection with fulfilling its/their duties and obligations under this BAA and the Agreement. Business Associate agrees to limit disclosure of PHI, to the extent practical, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request. Business Associate will not use or further disclose PHI other than as permitted or required by this BAA or the Agreement or as required by applicable law.
- 2.2 Safeguards.** Business Associate agrees to implement and use reasonable administrative, physical and technical safeguards to (a) prevent use or disclosure of PHI; and (b) reasonably protect the confidentiality, integrity, and availability of the PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity (“**Safeguards**”). Such safeguards shall comply with Applicable Laws and include a written information security policy, a response plan for Security Incidents, periodic security awareness training, and confidentiality/nondisclosure agreements with those independent subcontractors and consultants with which Business Associate has delegated duties under this BAA.
- 2.3 Reporting a Breach.** Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI not provided for herein of which it actually becomes aware, including Unsecured PHI and any Security Incident of which Business Associate actually becomes aware.
- 2.4 Assistance with Breach Investigation.** In the event of a Breach, Business Associate will provide reasonable assistance to, and cooperate with, Covered Entity in investigating the Breach and Business Associate agrees to provide the following information in writing to Covered Entity: (a) Identification of each Individual who is the subject of Unsecured PHI that has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed; (b) a brief description of the events; (c) date of the potential Breach; (d) date of discovery; (e) type of PHI involved; (f) any preliminary steps taken to mitigate the damage; and (g) a description of the investigatory steps taken.
- 2.5 Internal Practices.** Business Associate agrees to make available its internal practices, books, and records relating to the use and disclosure of PHI created for or from Covered Entity to the U.S. Department of Health and Human Services for purposes of determining Business Associate’s compliance with the HIPAA Privacy & Security Rules or this BAA.
- 2.6 Disclosure Accounting.** Business Associate agrees to document such 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 addition, within thirty (30) days after receiving a written request from Covered Entity, Business Associate will make available to Covered Entity the information necessary for Covered Entity to make an accounting of disclosures of PHI about an Individual, in accordance with 45 C.F.R. § 164.528.
- 2.7 Subcontractors.** Business Associate will require its subcontractors to provide reasonable assurance, evidenced by written agreement, of compliance with the same privacy and security obligations, restrictions, and conditions with respect to PHI as applies to Business Associate through this BAA. Business Associate may disclose PHI to other business associates of Covered Entity without requiring the written agreement described herein.
- 2.8 Availability of Information.** Business Associate agrees to provide access to Covered Entity, within thirty (30) days after receiving a written request from Covered Entity, to PHI in a Designated Record Set about an Individual, sufficient to allow Covered Entity to provide access to such Individual to his or her PHI, in compliance with the requirements of 45 C.F.R. §164.524. Business Associate will make such

information available in an electronic format where required by the HITECH Act.

- 2.9 Amendment of Information.** To the extent that the PHI in Business Associate's possession constitutes a Designated Record Set, within thirty (30) days after a written request by Covered Entity, Business Associate will make PHI available to Covered Entity as reasonably required to fulfill Covered Entity's obligations to amend such PHI pursuant to the HIPAA Privacy & Security Rules and Business Associate will, as directed by Covered Entity, incorporate any amendments to PHI into copies of such PHI maintained by Business Associate, all in accordance with 45 C.F.R. §164.526.
- 2.10 Management and Administration.** Business Associate agrees to only use or disclose PHI received in its capacity as a business associate to Covered Entity for Business Associate's own operations if: (a) the use relates to the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate or to provide data aggregation services relating to health care operations of Covered Entity; or (b) the disclosure of PHI received in such capacity will be made in connection with Business Associate's performance of the services set forth in the Terms of Service and such disclosure is required by law or Business Associate receives reasonable assurance from the person to whom the information will be disclosed that it will be kept confidential and the person further agrees to notify Business Associate of any Security Incident or Breach.
- 2.11 Data Aggregation Services.** Except as otherwise prohibited herein, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B) or in Company's sole discretion.
- 2.12 Prohibited Communications.** Business Associate will not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a).
- 2.13 Prohibited Fundraising.** Business Associate will not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b).
- 2.14 Carrying Out Covered Entity's Obligations.** To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.
- 2.15 Mitigation of Damages.** Business Associate agrees to make a reasonable attempt to mitigate, to the extent practical, any harmful effect that is known to Business Associate of the use or disclosure of PHI by Business Associate in violation of the requirements herein.
- 2.16** To the extent Business Associate has Access to or processes payment card information, including primary account numbers ("PANs") subject to the Payment Card Industry Data Security Standards ("PCI DSS") for the provision of Services to Covered Entity, Business Associate will make reasonable efforts to ensure that Business Associate is currently and demonstrably PCI DSS compliant, and will make reasonable efforts to maintain such compliance status as long as Business Associate has Access to, or processes, PANs in connection with this BAA.

### **3. RESPONSIBILITIES OF COVERED ENTITY**

- 3.1 Identification of Records.** With respect to the records Covered Entity furnishes to Business Associate, Covered Entity will identify those records that it considers to be PHI for purposes of this BAA.
- 3.2 Minimum Necessary.** Covered Entity will provide to Business Associate only the minimum PHI necessary to perform the Services set forth in the Agreement.

- 3.3 Increased Privacy Protections.** In the event that Covered Entity honors a request to restrict the use or disclosure of PHI pursuant to 45 C.F.R. §164.522, Covered Entity will notify Business Associate in writing of any restriction to the extent any such restriction may limit Business Associate's ability to use and/or disclose PHI as permitted or required under this BAA or impose obligations on Business Associate additional to or inconsistent with the obligations assumed hereunder. However, should such revisions materially increase Business Associate's cost of providing services under this BAA, Covered Entity shall reimburse Business Associate for such increase in cost.
- 3.4 Privacy Notice Limitations.** Covered Entity will not use Business Associate's software to distribute or disclose any PHI referenced in Sections 3.1, 3.2 and 3.3 hereof. Covered Entity will notify Business Associate of any limitations in its Notice of Privacy Practices in accordance with 45 C.F.R. §164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI or impose obligations on Business Associate additional to or inconsistent with the obligations assumed hereunder. In the event that any such limitation materially increases Business Associate's cost of providing services under this BAA, Covered Entity agrees to reimburse Business Associate for such increase in cost.
- 3.5 Changes in Permission.** Covered Entity will notify Business Associate of any changes in or revocation of permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI or impose obligations on Business Associate additional to or inconsistent with the obligations assumed hereunder. In the event that any such change in or revocation of permission materially increases Business Associate's cost of providing services under this BAA, Covered Entity agrees to reimburse Business Associate for such increase in cost.
- 3.6 Breach Notification.** In the event of a Breach or Security Incident, Covered Entity will have the sole right to determine whether notice is to be given to any Individuals, regulators, law enforcement agencies, consumer reporting agencies, media outlets, the U.S. Department of Health & Human Services, or others as required by Applicable Laws or in Covered Entity's discretion. In addition, Covered Entity will have the sole right to determine the contents of such notice, whether any type of remediation may be offered to affected Individuals, as well as the nature and extent of any such remediation. Covered Entity will be solely responsible for providing such notice and for the costs thereof.
- 3.7 Other Business Associates.** Covered Entity agrees to be solely responsible for ensuring that any contractual relationships it has with other business associates comply with all Applicable Laws, including, without limitation, the HIPAA Privacy & Security Rules.
- 3.8 Permissible Uses Only.** Except as otherwise provided herein, Covered Entity shall not ask Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity. Business Associate offers and requires encryption related to the transmission of data for the provision of services set forth in the Agreement. If Covered Entity does not use encryption, Covered Entity is solely responsible for any and all resulting liability relating to or arising from Covered Entity's failure to encrypt information, including, without limitation, PHI. Unencrypted e-mail and non-HIPAA compliant digital recorders must not be used by Covered Entity.

#### **4. PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or required hereunder, Business Associate may:

- 4.1** Make any and all uses and disclosures of PHI necessary to provide the services set forth in the Terms of Service to Covered Entity.
- 4.2** Use and disclose to Business Associate's directors, officers, subcontractors, employees, third party affiliates, representatives and agents the PHI in its possession for its management and administration or



to carry out the legal responsibilities of Business Associate in connection with Applicable Laws.

- 4.3 Subject to the confidentiality provisions herein, de-identify any and all PHI received or created by Business Associate under this BAA, which de-identified information shall not be subject to this BAA and may be used and disclosed on Business Associate's own behalf, all in accordance with the de-identification requirements of the Applicable Laws, including, without limitation, HIPAA Privacy & Security Rules.
- 4.4 Provide Data Aggregation Services relating to the Health Care Operations of the Covered Entity in accordance with Applicable Laws, including, without limitation, the HIPAA Privacy & Security Rules.
- 4.5 Identify Research projects conducted by Business Associate third parties for which PHI may be relevant, obtain on behalf of Covered Entity documentation of individual authorizations or an Institutional Review Board or a Privacy Board waiver that meets the requirements of 45 C.F.R. §164.512(i)(1) (each an "**Authorization**" or "**Waiver**") related to such projects, provide Covered Entity with copies of such Authorizations or Waivers, subject to confidentiality obligations ("**Required Documentation**"); and disclose PHI for such Research.
- 4.6 Make PHI available for reviews preparatory to Research and obtain and maintain written representations in accordance with 45 C.F.R. §164.512(i)(1)(ii) that the requested PHI is sought solely as necessary to prepare a Research protocol or for similar purposes preparatory to Research, that the PHI is necessary for the Research, and that no PHI will be removed in the course of the review.
- 4.7 Use the PHI to create a Limited Data Set in compliance with 45 C.F.R. 164.514(e) for Research, Health Care Operations or Public Health purposes.
- 4.8 Provide PHI to appropriate federal and state authorities, consistent with 45 C.F.R. §164.502(J)(1) and other Applicable Laws.

## 5. TERM AND TERMINATION

- 5.1 **Term.** This BAA will continue in full force and effect for as long as the Agreement remains in full force and effect. The term of this BAA will be effective as of the Effective Date and will continue in effect unless terminated as authorized in Section 5.2 herein. In addition, certain provisions and requirements of this BAA shall survive expiration or termination in accordance with Section 5.2 herein.
- 5.2 **Termination for Cause.** Without limiting the rights of the Parties as set out in the Agreement, each Party will have the right to terminate this BAA, Agreement if the other Party has engaged in a pattern of activity or practice that reasonably constitutes a material violation or breach of its obligations regarding PHI under this BAA. Prior to terminating this BAA, where a Party has knowledge of a material breach by the other Party, and cure is possible, the non-breaching Party will provide the other Party with an opportunity to cure the material violation or breach. If these efforts to cure the violation or breach within ten (10) business days of the breaching Party's receipt of written notice of said breach are unsuccessful as determined by the non-breaching Party in its reasonable discretion, then the Parties will terminate this BAA, the Agreement as soon as administratively feasible. If either Party has knowledge of a material breach by the other Party and cure is not reasonably possible, the non-breaching Party shall terminate this BAA, the Agreement immediately by providing notice. If a Party determines, in its sole discretion, that the other Party has breached the terms of this BAA and such Party determines that neither cure nor termination of this BAA is feasible, the non-breaching Party may report such breach to the U.S Department of Health and Human Services.
- 5.3 **Effect of Termination.** Except as otherwise provided herein, the Parties agree that upon termination of this BAA for any reason, Business Associate will make reasonable efforts to destroy all PHI received from Covered Entity or created, maintained, or received by Business Associate on behalf of Covered

Entity. Business Associate reserves the right to charge a reasonable fee to provide to Covered Entity a copy of all medical records in a one-time digital download. In the event that Business Associate reasonably determines that return or destruction of the PHI is not feasible, Business Associate will notify Covered Entity of the conditions that make return or destruction not feasible. Upon notification of the Covered Entity that return or destruction of PHI is not feasible, Business Associate may retain the PHI and will make reasonable efforts to continue to extend any and all protections, limitations and restrictions contained in this BAA to Business Associate's use and/or disclosure of PHI for so long as Business Associate maintains such PHI.

**5.4 Cooperation.** Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

## 6. INDEMNIFICATION

**6.1** Covered Entity agrees to indemnify, defend and hold harmless Business Associate and its respective employees, trustees, staff, representatives, agents, affiliates, subsidiaries and subcontractors (collectively, the "**Indemnitees**") from and against any and all claims in law or in equity (including claims involving strict or absolute liability), obligations, actions, causes of action, suits, debts, judgments, losses, fines, penalties, damages, expenses (including reasonable legal fees and expenses), liabilities, lawsuits or costs of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Indemnitees by anyone whatsoever arising or resulting from a breach of this BAA, a violation of HIPAA and its implementing regulations, a violation of the HITECH Act, a violation of Applicable Laws, or a Breach by Business Associate or its respective employees, trustees, staff, representatives, agents, affiliates, subsidiaries or subcontractors.

## 7. MISCELLANEOUS

**7.1 Interpretation, References and Amendments.** Any ambiguity in this BAA, the Agreement shall be resolved to maintain compliance with the HIPAA Privacy & Security Rules and the HITECH Act. A reference in this BAA to a section of the HIPAA Privacy & Security Rules means the section as in effect or as amended or modified from time to time, including any corresponding provisions and subsequent superseding laws or regulations, for which compliance is required. If any of the regulations promulgated under HIPAA or the HITECH Act are amended or interpreted in a manner that renders this BAA ambiguous or inconsistent therewith, Business Associate shall amend this BAA to the extent necessary for Business Associate and Covered Entity to comply with such amendments or interpretations. It is understood that by continuing to access, browse, contribute to, view, register with, interact with, install or otherwise use the Services, Covered Entity shall be bound (or re-bound) by this BAA, regardless of whether or not Covered Entity has been expressly notified by Business Associate of amendments made to the provisions herein.

**7.2 Survival.** Sections 2, 3, 4.8, 5.2, 5.3, 5.4 and 7.7 shall survive the expiration or termination for any reason of this BAA or the Agreement.

**7.3 Governing Law, Venue and Jurisdiction.** This BAA shall be construed as to all matters, including, but not limited to the validity, construction and performance of this BAA, solely in accordance with the laws of the State of New York governing contracts wholly executed and performed therein, notwithstanding any conflict of law principles. The Parties hereto agree to submit to venue and jurisdiction exclusively in New York County, NY, and each Party hereby waives any right it may have to challenge the appropriateness of such forum, whether on the basis of the doctrine of forum non conveniens or otherwise.

**7.4 Dispute Resolution.** Notwithstanding Section 7.5 below, with respect to any and all claims in law or in equity (including claims involving strict or absolute liability), obligations, actions, causes of action,

suits, debts, judgments, losses, fines, penalties, damages, expenses (including reasonable attorney's fees), liabilities, lawsuits or costs incurred by a Party which arise or result from (i) a breach of this BAA, (ii) a violation of HIPAA and its regulations, (iii) a violation of any Applicable Laws, or (iv) a Breach by a Party or its respective employees, trustees, staff, representatives, agents, affiliates, subsidiaries or subcontractors ("**Disputes**"), such Disputes shall be settled by binding arbitration under the then-current rules ("**Arbitration Rules**") of the American Arbitration Association (the "**AAA**") in the City of New York, New York with one (1) arbitrator mutually-approved by the Parties making such determination. However, the arbitration may proceed telephonically if the total amount of the Dispute does not exceed Two Thousand Five Hundred (\$2,500.00) U.S. dollars (if the claimant who filed the arbitration so chooses). In the event the AAA is unavailable or refuses to arbitrate the Parties' Dispute for any reason, such arbitration shall be administered and conducted by a widely-recognized arbitration organization that is mutually agreeable to the Parties, but neither party shall unreasonably withhold their consent. If the Parties are unable to mutually approve an AAA arbitrator, they shall select a neutral arbitrator in accordance with the Arbitration Rules for the selection of neutral arbitrators. For the avoidance of doubt, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and expenses of said arbitration. Furthermore, the Parties and any other arbitration participants agree to hold the existence, content and result of such arbitration in confidence. If informal means of dispute resolution are used prior to either Party filing a demand for arbitration, the Parties agree that all communications shall remain privileged and confidential, and shall not be subject to discovery or be admissible in evidence unless expressly waived or precluded under applicable law. If the foregoing agreement to arbitrate is found not to apply to a Party's claim(s) by an arbitrator, the Parties agree that all judicial proceedings between them (including, without limitation, small claims actions) must be brought solely in the federal or state courts of New York, New York, and the Parties consent to venue and personal jurisdiction exclusively in those courts. Any claim(s) not subject to arbitration must be commenced within one (1) year after the date the Party asserting the claim first knows or reasonably should know of the act, omission or default giving rise to the claim. If applicable law prohibits a one-year limitation period for asserting claims, any claim(s) must be asserted within the shortest time period permitted by applicable law.

- 7.5 Right to Seek Injunctive Relief.** Both Parties may, at their sole discretion, seek interim injunctive relief in any court of competent jurisdiction and this Section 7.5 may be enforced by any court of competent jurisdiction.
- 7.6 Independent Contractor.** Business Associate, including its directors, officers, employees and agents, is an independent contractor and not an agent of Covered Entity or a member of its workforce. Without limiting the generality of the foregoing, Covered Entity shall have no right to control, direct, or otherwise influence Business Associate's conduct in the course of performing the services, other than through the enforcement of this BAA or the Agreement, or the mutual amendment of the same.
- 7.7 No Third Party Beneficiaries.** The Parties agree there are no intended third party beneficiaries under this BAA. Nothing express or implied in this BAA is intended to confer upon any person, other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. This provision shall survive termination of this BAA.
- 7.8 Additional Provisions.** This Agreement has not been, and shall not be, modified by this BAA in whole or in part, and shall remain in full force and effect in accordance with the terms thereof. This BAA may be executed in counterparts, each of which when taken together shall constitute one original. No amendments or modifications to this BAA shall be effected unless executed by both Parties in writing. The Agreement, together with this BAA constitute the entire agreement between the Parties with respect to the subject matter contained therein, and this BAA supersedes and replaces any former "business associate" agreement or addendum previously entered into by the Parties. All terms herein shall be interpreted in accordance with their plain-language meanings and any ambiguities shall not be interpreted for or against a Party, regardless of whether or not that Party is designated as the drafter of this BAA.

## 8. ELECTRONIC SIGNATURE

- 8.1** Covered Entity acknowledges and agrees that by agreeing to this BAA electronically, Covered Entity is expressly agreeing to all of the provisions set forth herein. Furthermore, Covered Entity acknowledges and agrees that by affixing Covered Entity's electronic signature, Covered Entity is submitting a legally binding electronic signature and entering into a legally binding contract. Accordingly, Covered Entity acknowledges that Covered Entity's electronic submission constitutes Covered Entity's agreement and intent to be bound by this BAA in its entirety. Pursuant to applicable statutes, regulations, rules, ordinances or other laws, including without limitation the United States Electronic Signatures in Global Commerce Act, P.L. 106-229 (the "**E-Sign Act**") or other similar statutes, COVERED ENTITY HEREBY AGREES TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS, AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED THROUGH THE SERVICES OFFERED TO COVERED ENTITY BY BUSINESS ASSOCIATE.

## 9. NOTICES

- 9.1** All notices, requests, approvals, demands and other communications required or permitted to be given under this BAA shall be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier to the party to be notified. All communications shall be deemed given when received. If Business Associate or anyone to whom Business Associate provides Access to PHI becomes legally compelled by a court of competent jurisdiction or other government authority to disclose PHI, then, to the extent permitted by law, Business Associate will promptly provide Covered Entity with sufficient notice of all available details of the legal requirement and reasonably cooperate with Covered Entity's efforts to challenge the disclosure, seek an appropriate protective order, or pursue such other legal action, as Covered Entity may deem appropriate. The contact info of the Covered Entity shall be the info submitted through Business Associate's Website during the registration process, or as otherwise designated through notice. The contact info of Business Associate shall be as follows:

ZyDoc Medical Transcription, LLC ([operations@zydoc.com](mailto:operations@zydoc.com))  
1455 Veterans Memorial Highway  
Islandia, NY 11749  
Attn: Legal