



SYNERGY CLOUD SOFTWARE SUBSCRIPTION AGREEMENT
 Cover Sheet

Circadiance LLC
1300 Rodi Road
Turtle Creek PA 15145

p: 724 858 2837 888 825 9640

Customer	_____		
Physical Address	_____		
City	State	Zip	_____
Billing Address	_____		
City	State	Zip	_____
Contact	Contact	_____	
Title	Title	_____	
Phone	Phone	_____	
Fax	Fax	_____	
E-Mail	E-Mail	_____	

This Synergy Cloud Software Subscription Agreement (“**Agreement**”) consists of this Cover Sheet, the attached terms and conditions and Exhibit A, which includes all Invoices. This Agreement becomes legally binding upon the last signature by an authorized representative of Circadiance LLC (“**Circadiance**”) and the customer (“**Subscriber**”), identified above (the “**Effective Date**”).

Circadiance LLC

Subscriber

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Signature/Date: _____

Signature/Date: _____

1. Definitions.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify a System User’s identity and authorization to access and use the Services on an Account by Account basis.

“**Account**” means a collection of financial, administrative, System User, Associate, Subscriber Data and End-User Patient Data stored within and utilized in connection with the Services.

“**Account Administrator**” means the person or entity authorized to act on behalf of the Subscriber with regard to this agreement, issue access credentials to System Users and Associates for Accounts and serve as administrative liaison to Circadiance for all matters pertaining to the Maintenance Services.

“**Associate**” means a person or entity other than a System User authorized to receive reports from the Services. For the purpose of clarity, an Associate may be another subscriber to the Services.

“**Associate Data**” means information, data and other content, in any form or medium, that is collected, uploaded or otherwise received, directly or indirectly from an Associate through the use of the Services.

“**Action**” has the meaning set forth in Section 10.1.

“**BAA**” has the meaning set forth in Section 7.4.

“**Consent**” means consent by an End User Patient (or in the case of a minor End User Patient, the legal guardian) to the use of the Monitor Device to collect PHI Data, the transmission of such PHI Data to the Services, the use of the Services, the distribution of PHI Data to System Users and Subscriber and the distribution of PHI Data including medical information, results, analyses and conclusions by System Users and Associates in connection with the Services. All Consents will be substantially in the form of Exhibit D and may be obtained by execution of a written agreement or electronically.

“**Cover Sheet**” means the signature page of this Agreement.

“**Database**” has the meaning set forth in Section 7.3.

“**De-Identified Data**” has the meaning set forth in Section 7.4.

“**Disabling Device**” means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Circadiance or its designee to disable Subscriber’s, Associate’s or any System User’s access to or use of the Services automatically with the passage of time or under the positive control of Circadiance or its designee.

“**Documentation**” means any manuals, instructions, videos or other documents or materials that Circadiance provides or makes available to Subscriber which describe the functionality, components, features or requirements of the Services.

“**End User Patients**” means a person from whom Subscriber Data (including without limitation PHI Data) is obtained through the use of a Monitor Device.

“**Error**” means a failure of the Services to substantially comply with the applicable published Documentation.

“**Fix**” means a correction of an Error, including a work-around, in order for the Services to function in accordance with the applicable published Documentation.

“**Fees**” has the meaning set forth in Section 6.1.

“**Force Majeure Event**” has the meaning set forth in Section 12.

“**Circadiance Materials**” means the Service software, Documentation and any and all other information, data, documents, materials, works and other content, devices, methods, processes, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Circadiance in connection with the Services.

“**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby, or (b) prevent Subscriber or any System User from accessing or using the Services as intended by this Agreement. Harmful Code does not include any Disabling Device.

“**Indemnified Parties**” has the meaning set forth in Section 13.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Invoices**” means all quotations, invoices, orders and other purchase documentation attached as Schedule A to this Agreement which contain all variable terms, including Fees, the Term and additional details regarding the Services.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance.

“**Maintenance Services**” means Circadiance’s provision of qualified technical representatives by telephone, email or other remote means to assist Subscriber Coordinators with the operation and answering of questions related to the Services.

“**Monitor Device**” means an interactive hardware sensor in electronic communication with the Services and supplied by Circadiance under separate agreement.

“**PHI Data**” has the meaning set forth in Section 7.3

“**Prescribing Physician**” means a licensed medical practitioner ordering the use of Services and Monitoring Devices for the benefit of an End User Patient. For the purpose of clarity, Prescribing Physician includes all staff associated with such Prescribing Physician. For the purpose of clarity, a Prescribing Physician is one of a System User or an Associate.

“**Services**” has the meaning set forth in Section 2.1.

“**Service Levels**” has the meaning set forth in Section 5.3.

“**Service Request**” has the meaning set forth in Section 5.2.

“**Subscriber Data**” means information, data and other content, in any form or medium, that is collected, uploaded or otherwise received, directly or indirectly from Subscriber through the use of the Services.

“**Subscriber Systems**” means the Subscriber’s and System User’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Subscriber, its authorized System Users, authorized Associates or through the use of third-party services.

“**System User**” means each named individual authorized to use the Services by the issuance of Access Credentials pursuant to Section 3.1 and the other terms and conditions of this Agreement.

“**System User Terms and Conditions**” means those user terms and conditions included in Exhibit E.

“**Term**” has the meaning set forth in Section 8.1.

2. Services.

2.1. Data Distribution and Exchange Model. Subscriber may distribute Monitor Devices to End User Patients, who have obtained a prescription from a Prescribing Physician. Alternatively, Subscriber may be granted access to Associate Data for the purpose of review or analysis. To the extent not already obtained by a Prescribing Physician, Associate, System User or other party, Subscriber will have the responsibility to obtain a Consent in advance of implementing Services with respect to any End User Patient. Subscriber, through its Account Administrators, will issue Access Credentials to System Users and provide or receive reports, Subscriber Data or Associate Data to or from Associates, each of whom must accept the System User Terms and Conditions prior to being granted access to the Services.

2.2. Services. Subject to and conditioned on Subscriber’s, the System Users’ and Associates’ compliance with the terms and conditions of this Agreement including the payment of Fees, during the Term, Circadiance shall use commercially reasonable efforts to provide interactive access to the Synergy Cloud service, including data from the Monitor Devices and access to Associate Data, including to host, manage, operate and maintain the Synergy Cloud for remote electronic access and use by Subscriber, its System Users and Associates (“**Services**”).

2.3. Control of Services. Except as otherwise expressly provided in this Agreement, as between the parties, Circadiance has and will retain control over the operation,

provision, maintenance and management of the Services, including the: selection, deployment, modification, replacement, maintenance, upgrades, corrections and repairs of the Services.

2.4. Control of Systems and Devices. Subscriber has and will retain sole control over the operation, maintenance and management of, and all access to and use of its own Subscriber Systems and any associated Monitor Devices. As appropriate, Subscriber will distribute Monitor Devices to End User Patients.

2.5. Distribution and Authorization of Access Credentials. Subscriber will identify, authorize and have sole responsibility for distribution of Access Credentials to System Users and Associates or coordination of access with System Users and/or Associates for use of the Services by each System User and Associate, respectively, including any: (i) information, instructions or materials provided by any of them pursuant to the Services; (ii) results obtained from any use of the Services; and (iii) conclusions, decisions or actions based on such use.

2.6. End User Patients and Consents. Subscriber will have the responsibility for providing any: (i) information, instructions or materials regarding the operation of relevant Monitoring Devices or use of or access to the Services; (ii) results obtained from any use of the Services; and (iii) conclusions, decisions or actions based on such use.

2.7. Changes. Circadiance reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful, but shall give Subscriber prior written notice of any such changes which materially affect use of the Services.

2.8. Suspension or Termination of Services. Circadiance may, directly or indirectly, and by use of a Disabling Device or any other lawful means, suspend, terminate or otherwise deny Subscriber’s, System User’s, Associate’s or any other access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if: (a) Circadiance receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Circadiance to do so; or (b) Circadiance believes, in its sole discretion, that: (i) Subscriber, any System User or Associate has failed to comply with, any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement; (ii) Subscriber, any System User or Associate is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (iii) this Agreement expires or is terminated. This Section does not limit any of Circadiance’s or Subscribers rights or remedies, whether at law, in equity or under this Agreement.

3. Authorization and Subscriber Restrictions.

3.1. Authorization. Subject to and conditioned on Subscriber’s payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Circadiance hereby authorizes Subscriber to

access and use, during the Term, the Services as Circadiance may supply or make available to Subscriber. Subscriber shall be solely responsible for the distribution of Access Credentials to its internal System Users and coordination with third party System Users and Associates, each of which shall accept the System User Terms and Conditions prior to access to any Subscriber Data. The Services are solely for the use by and through the number of simultaneous System Users and/or Monitor Devices listed on an Invoice affixed hereto as part of Exhibit A, however, reports to Associates may be issued without separate Fees, unless stated otherwise in an Invoice. This authorization is non-exclusive and non-transferable, however, Subscriber may substitute different natural persons as System Users and different Monitor Devices.

3.2. Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services or Circadiance Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services and the Circadiance Materials are and will remain with Circadiance.

3.3. Authorization Limitations and Restrictions. Subscriber shall not, and shall not permit any other person or entity to, access or use the Services except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Subscriber shall not, except as this Agreement expressly permits: copy, modify or create derivative works or improvements of the Services; rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services to any other person or entity, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part; bypass or breach any security device or protection used by the Services or access or use the Services other than by a System User through the use of his or her own then-valid Access Credentials as issued by the appropriate Account Administrator for the relevant domain; input, upload, transmit or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code; damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, in whole or in part; remove, delete, alter or obscure any trademarks, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services, including any copy thereof; access or use the Services in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law; access or use the Services for purposes of competitive analysis of the Services or, the development, provision or use of a competing software service or product or any other purpose that is to the Circadiance's detriment or commercial disadvantage; or otherwise access or use the Services beyond the scope of the authorization granted under this Agreement.

4. **Subscriber Systems.** Subscriber, System Users and Associates shall at all times maintain their own Subscriber Systems or other devices for accessing the Services. Circadiance has no responsibility for the continued operation of such Subscriber Systems, or their access to the Services beyond the control of Circadiance, including without limitation, the use of the Internet or other mobile communication systems.

5. **Service Level and Support.**

5.1. Service Level. Subject to the terms and conditions of this Agreement, Circadiance will use commercially reasonable efforts to make the Services available for Subscriber's use 99% of each calendar month, based upon a 720 hour month, less scheduled downtime. Circadiance makes no other representation or warranty of any kind with respect to availability of the Services, the compatibility of the Services with any third party software or anything other than the hosting device operating systems and versions associated therewith. To the extent Circadiance does not comply with the availability provision of this Section, Circadiance will offer a credit to Subscriber of ten (10%) percent of the following calendar month invoice. Circadiance has no other obligation to issue any credit for downtime of the Services

5.2. Support. Subject to payment of all Fees, Circadiance will make the Maintenance Services available during its then-current normal business hours. Such technical support shall include, but is not limited to, troubleshooting, problem diagnosis, release or system management, and recommendations for fully utilizing the Services in accordance with the Documentation. Subscriber will identify no more than two (2) Account Administrators who shall solely report problems with the Services (each such report, a "**Service Request**") as soon as practicable. Circadiance will not receive or act upon Service Requests from System Users.

5.3. Fixes. As part of Maintenance Services, Circadiance shall make commercially reasonable efforts to provide Fixes for Errors identified in a Service Request in accordance with the Response Time, Effort Level, and Escalation Path (as defined in the Service Levels) guidelines outlined below for the applicable Severity Levels (as defined in the Service Levels) as identified in the chart attached hereto as Exhibit B (together, the "**Service Levels**"). Circadiance's obligations with respect to Service Levels are contingent upon Subscriber: (i) devoting an appropriate level of effort to resolving the Error as is required of Circadiance, (ii) responding to requests made by Circadiance within the applicable Response Time (including the timely provision of access to any Subscriber Systems utilizing the Software), and (iii) assigning its most qualified personnel to help Circadiance address the Error.

5.4. Exclusions. Circadiance shall have no obligation to Subscriber to the extent any Software is adversely affected by:

- i. use of the Services in combination with other software, equipment or communications networks that are not referenced in the Documentation or otherwise approved in writing by Circadiance;

- ii. any modification to the operating environment that is made other than by or at the direction of Circadianc, or with notification to Circadianc and appropriate testing;
- iii. any modification to Subscriber's data structure to the extent interoperable with the Services made without reasonable notice to Circadianc;
- iv. viruses or other malware introduced through no fault of Circadianc;
- v. use of the Services other than as permitted by Circadianc; or
- vi. Subscriber's failure to perform Subscriber responsibilities in accordance with this Agreement.

5.5. Data Backup. Circadianc will exert commercially reasonable efforts to maintain any Subscriber Data hosted by Circadianc pursuant to the Services. EXCEPT AS MAY BE CAUSED BY CIRCADIANCE'S NEGLIGENCE OR WILFUL MISCONDUCT, CIRCADIANCE HAS NO OBLIGATION OR LIABILITY OTHER THAN PURSUANT TO THIS AGREEMENT FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF SUBSCRIBER DATA.

6. Fees; Payment Terms.

- 6.1. Fees. Subscriber shall pay Circadianc the fees in accordance with the payment terms set forth on the Quotation ("Fees").
- 6.2. Taxes. All Fees and other amounts payable by Subscriber under this Agreement are exclusive of taxes and similar assessments. Subscriber is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Subscriber hereunder, other than any taxes imposed on Circadianc's income.
- 6.3. Payments. Subscriber shall make all payments hereunder in US dollars. Except as provided herein, Fees are non-refundable.

7. Intellectual Property Rights; Confidentiality and Data.

- 7.1. Services and Circadianc Materials. All right, title and interest in and to the Services and Circadianc Materials, including all Intellectual Property Rights therein, are and will remain with Circadianc. Neither Subscriber nor any System User or Associate has any right, license or authorization with respect to any of the Services or Circadianc Materials. All other rights in and to the Services and Circadianc Materials are expressly reserved by Circadianc.
- 7.2. Subscriber Data. As between Subscriber and Circadianc, Subscriber is and will remain the sole and exclusive owner of all right, title and interest in and to or party responsible for all Subscriber Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 7.5.

7.3. Personal Health Information Data. The parties acknowledge that during its use of the Services, Subscriber will be collecting and uploading onto the database which is a part of the Services information relating to the clinical treatment and plan of care of End User Patients which may include PHI of such End User Patients (collectively, the "PHI Data").

7.4. Business Associate and use of PHI Data. Except as otherwise specifically provided in this Section 7, and further subject to the limitations in the Business Associate Addendum (the "BAA"), Exhibit C to this Agreement, or any business associate agreement Circadianc may have with the relevant other Subscribers, Associates or Prescribing Physicians, Circadianc, directly or indirectly, will not use for itself or make available for use by others any PHI Data. Further, to the extent Circadianc is permitted in accordance with this Section 7 to use or make any PHI Data available to third parties (other than Associates pursuant to an associate agreement or similar terms and conditions), it shall not use or make any such PHI Data (or other information) available which could, alone or in conjunction with any other information, lead to the identity of any patients (including, without limitation, with respect to such patients, any names, addresses, telephone numbers, Social Security numbers, or other identifiers specified in Section 164.514 of the HIPAA Privacy Rule and will keep all such information strictly confidential. Circadianc may de-identify individually identifiable health information (as defined in HIPAA) of patients contained in any Subscriber Data in accordance with the de-identification standards set forth in HIPAA that is received from or received or created on behalf of Subscriber or a relevant Associate. Such de-identified PHI Data pertaining to individually identifiable health information of any patient is hereinafter collectively referred to as "**De-identified Data**." During and following the Term, Circadianc will not, directly or indirectly, make any attempt to re-identify any De-identified Data and will not disclose any De-identified Data to any third party in a manner that could allow such third party to re-identify any De-identified Data, or to identify any End User Patient. In furtherance of the foregoing, Circadianc will not directly or indirectly provide any key or other methodology that would allow such identification or re-identification contemplated above. Circadianc may internally use the De-identified Data for the purpose of compiling aggregate outcome and/or benchmarking profiles for product development or for sale, license or other disclosure of third parties.

7.5. Consent to Use Subscriber Data. Subscriber represents that it has the appropriate authorization to obtain all Subscriber Data and to transmit the same to Circadianc. Subscriber hereby irrevocably grants all such rights and permissions in or relating to Subscriber Data to Circadianc as necessary or useful to perform the Services; and as are necessary or useful to enforce this Agreement and exercise and perform its rights and obligations hereunder.

8. Term and Termination.

- 8.1. Term. The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect

as set forth on the Quotation or any relevant statement of work (the “**Term**”). This Agreement will automatically renew for sequential terms of length equal to the initial term absent written notice of termination by Subscriber no less than thirty (30) days prior to the expiration of any current term.

- 8.2. **Termination for Cause.** In addition to any other express termination right set forth elsewhere in this Agreement Circadiance may terminate this Agreement, effective on written notice to Subscriber, if Subscriber fails to pay any undisputed amount when due hereunder, and such failure continues more than thirty (30) days after Circadiance’s delivery of written notice thereof. Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- 8.3. **Termination for Convenience.** Subscriber may, at any time, cancel access to the Services and terminate this Agreement, upon thirty (30) days notice and payment of the Cancellation Fee identified on the relevant Invoice.
- 8.4. **Refund of Fees Upon Termination.** If Subscriber is terminating this Agreement for cause as set forth in Section 8.2 or upon payment of the Cancellation Fee as set forth in Section 8.3, Circadiance shall refund any prepaid Fees calculated from the effective date of termination to the end of the then-current term. If Circadiance terminates this Agreement for cause as set forth in Section 8.2, Subscriber remains liable for all unpaid fees that are payable for the entire subscription period and/or no refund of prepaid fees shall be allowed to Subscriber.
- 8.5. **Effect of Expiration or Termination.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate; except as required by obligations to other Accounts or Subscribers with responsibility for the same End User Patients, Circadiance shall immediately cease all use of any Subscriber Data or Subscriber’s Confidential Information for any purpose other than disclosure as required by law or policy. Circadiance, to the extent required by law or policy, may be required to retain Subscriber Data as medical records, and the same shall be subject to all confidentiality and other Business Associate obligations as set forth in the BAA for so long as Circadiance maintains such Subscriber Data. Circadiance shall (i) return to Subscriber all documents and tangible materials containing, reflecting, incorporating or based on Subscriber’s Confidential

Information; (ii) provide Subscriber with a flat file of Subscriber Data within a commercially reasonable period of time and (iii) place all Subscriber Data into a storage format from which information may be retrieved but does not appear available to any third party including other Subscribers or Associates. Subscriber shall immediately cease all use of any Services or Circadiance Materials and (i) return to Circadiance, or at Circadiance’s written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Circadiance Materials or Circadiance’s Confidential Information; and (ii) permanently erase all Circadiance Materials and Circadiance’s Confidential Information from all systems Subscriber directly controls, other than backup files kept in the ordinary course of business. Circadiance may disable all Subscriber, System User and Associate access to the Services and Circadiance Materials.

9. Representations and Warranties.

- 9.1. **Mutual Representations and Warranties.** Each party represents and warrants to the other party that: it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
- 9.2. **Additional Circadiance Representations and Warranties.** Circadiance represents and warrants that the Services will perform substantially in accordance with the Circadiance Materials. Circadiance further represents, warrants and covenants to Subscriber that when used by Subscriber in accordance with this Agreement, no Services as delivered by Circadiance does or will: infringe, misappropriate or otherwise violate any United States intellectual property right of any third party.
- 9.3. **DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, ALL SERVICES AND CIRCADIANCE MATERIALS ARE PROVIDED “AS IS” AND CIRCADIANCE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND CIRCADIANCE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, , AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, CIRCADIANCE MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR CIRCADIANCE MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET SUBSCRIBER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT,**

BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.

THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND CIRCADIANCE MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

10. Infringement Indemnification.

- 10.1. Circadiance Indemnification. Circadiance shall indemnify, defend and hold harmless Subscriber from and against any and all Losses incurred by Subscriber arising out of or relating to any claim, suit, action or proceeding (each, an “**Action**”) by a third party that the Services, Circadiance Materials or Subscriber’s use of the Services or Circadiance Materials (excluding Subscriber Data) in compliance with this Agreement infringes a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any: access to or use of the Services or Circadiance Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in writing by Circadiance; modification of the Services or Circadiance Materials; or failure to timely implement any modifications, upgrades, replacements or enhancements made available to Subscriber by or on behalf of Circadiance.
- 10.2. Subscriber Indemnification. Subscriber shall indemnify, defend and hold harmless Circadiance and its officers, directors, employees, agents, successors and assigns from and against any and all Losses incurred by such indemnitee in connection with any Action by a third party that arises out of or relates to any: Subscriber Data or any other materials or information provided solely by or on behalf of Subscriber or any System User or Associate authorized by Subscriber; or breach of any of its representations, warranties, covenants or obligations under this Agreement.
- 10.3. Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified. The party seeking indemnification shall cooperate with the other party at the indemnifying party’s sole cost and expense. The indemnifying party shall have the right to take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same.
- 10.4. Mitigation. If any of the Services or Circadiance Materials are, or in Circadiance’s opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Subscriber’s, any System User’s or Associate’s use of the Services or Circadiance Materials is enjoined or threatened to be enjoined, Circadiance may, at its option and sole cost and expense: obtain the right for Subscriber to continue to use the Services and Circadiance Materials as contemplated by this Agreement; modify or replace the Services and/or Circadiance Materials, in whole or in part, to avoid infringement and make the Services and/or Circadiance Materials (as so modified or replaced) non-infringing; or by written notice to Subscriber, terminate this Agreement and require Subscriber to immediately cease any use of the Services and/or Circadiance Materials.

11. Limitations of Liability.

OTHER THAN AS SET FORTH HEREIN, IN NO EVENT WILL CIRCADIANCE BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

OTHER THAN AS SET FORTH HEREIN, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF EITHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE LICENSE FEES RECEIVED BY CIRCADIANCE OR PAID BY SUBSCRIBER FOR THE PRECEDING ONE YEAR PERIOD. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATION DOES NOT APPLY TO EITHER PARTY’S INDEMNIFICATION OBLIGATIONS HEREIN.

12. **Force Majeure**. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstances beyond such party’s reasonable control (a “**Force Majeure Event**”), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

THIS SECTION SETS FORTH SUBSCRIBER’S SOLE REMEDIES AND CIRCADIANCE’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS

13. **General Indemnification.** Each Party shall indemnify and hold harmless the other party and its officers, shareholders, and the directors, agents, and employees thereof (collectively, the “**Indemnified Parties**” and individually, an “**Indemnified Party**”) from and against all losses, claims, damages, expenses, costs, and attorneys’ fees because of any injury to person, life, or property or injury resulting in the injury to person or persons or unauthorized disclosure of PHI Data, arising out of or in connection with the performance of this Agreement or progress of the work to be done hereunder, including those alleged to be the result of the negligence of one or more Indemnified Parties. In the event one or more of the Indemnified Parties is made a party to any suit or litigation (whether or not the Indemnified Parties are the only parties alleged to be negligent) because of injury or damage or alleged injury or damage to person, life, or property or injury or alleged injury resulting in the death of any person or persons arising out of or in connection with the performance of this Agreement or progress of the work to be done hereunder, the indemnifying Party shall defend such action on behalf of the Indemnified Party or Parties by counsel chosen by the indemnifying Party, and shall pay all damages, costs, expenses, and attorneys’ fees incurred in connection with such defense. If judgment shall be obtained, then the indemnifying Party shall pay and satisfy such judgement to the extent that the indemnifying Party is found liable. If a claim shall be allowed in any of such proceedings against any of the Indemnified Parties or a settlement is reached, the indemnifying Party shall pay and satisfy such claim, or settlement.

14. Miscellaneous.

- 14.1. Further Assurances. Upon a party’s reasonable request, the other party shall, at the requesting party’s sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.
- 14.2. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 14.3. Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- 14.4. Entire Agreement. This Agreement and the Contract constitute the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- 14.5. Assignment. Neither party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other party’s prior written consent, which consent may be given or withheld in the party’s sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving either party (regardless of whether

Subscriber or Circadiance is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which the other party’s prior written consent is required. No delegation or other transfer will relieve either party of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

- 14.6. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 14.7. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 14.8. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the Commonwealth of Pennsylvania in each case located in Allegheny County, Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party’s address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.
- 14.9. Counterparts; Electronic Execution. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Exhibit A – Invoices

Exhibit B – Service Levels

Severity Level	Response Times	Effort Level and Escalation Path
<p>Critical</p> <p>An error for which there is no work-around, which causes the design making capability of the Services to be unavailable and which requires immediate attention.</p> <p>Critical issues must be reported by phone to initiate an appropriate response to a Critical error.</p>	<p>During regular business-hours, if support personnel are not reached by phone, Circadiance will respond to a Critical support voice message as soon possible by a return communication to Subscriber to validate receipt of the critical support call and begin the process of addressing the issue.</p> <p>Circadiance will respond to Subscriber within 4 business hours with a status update of the reported critical issue and provide further updates for unresolved issues on agreed upon intervals until the issue is resolved. Subscriber is expected to respond to a Circadiance inquiry or request within three hours.</p>	<p>Circadiance will make reasonably diligent efforts to resolve the error on a 24x7 basis or as otherwise agreed by the Parties. A request shall be escalated to Circadiance management if a Fix is not provided within 1 business day of Circadiance’s receipt of the Subscriber report of an error in this category.</p>
<p>High</p> <p>An error other than a Critical Severity Level error for which there is no work-around that results in a loss of access to the Services or that causes features of the Services to not work which limits access or use of the Services causing the Subscriber to miss required deadlines.</p>	<p>Circadiance will respond to the Subscriber within 1 business day and will update the Subscriber at least every other day. Subscriber will respond to a Circadiance inquiry or request within 1 business day.</p>	<p>Circadiance will make reasonably diligent efforts to resolve the error during normal business hours. A request shall be escalated to Circadiance management if a Fix is not provided within 3 business days of Circadiance’s receipt of the Subscriber report of an error in this category.</p>
<p>Medium</p> <p>An error other than a Critical or High Severity Level error that has a material impact on the functionality of the Services that results in an inconvenient use of or access to the system (e.g., a feature is not working as documented but a workaround is available and business functions are not materially impaired).</p>	<p>Circadiance will respond to the Subscriber within 2 business days.</p>	<p>Circadiance will reasonably attempt to resolve the error during normal business hours.</p>
<p>Low</p> <p>An error other than a Critical, High, or Medium Severity Level error that is typically cosmetic and does not degrade the use of the system.</p>	<p>Circadiance will respond to the Subscriber within 3 business days or as otherwise agreed by the Parties.</p>	<p>Circadiance will reasonably attempt to resolve the error during normal business hours.</p>

Exhibit C – Business Associate Agreement**BUSINESS ASSOCIATE SUBCONTRACTOR ADDENDUM ("BA Agreement")**

The parties hereto have entered into a Circadiance Synergy Cloud Software Subscription Agreement of even date, of which this BA Agreement is a part and exhibit thereto ("Subscription Agreement"). To the extent that Subscriber (as defined in the Subscription Agreement and identified herein as "Business Associate") discloses Protected Health Information to Circadiance (as defined in the Subscription Agreement and identified herein as "Subcontractor") in connection with services or products provided to Business Associate, including without limitation the Services as defined in the Subscription Agreement, or as otherwise required by the Health Insurance Portability and Accountability Act of 1996, as amended, ("HIPAA"), Business Associate and Subcontractor agree to the following terms and conditions, which are intended to comply with HIPAA, the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and their implementing regulations:

The parties contemplate that Business Associate will rely on Subcontractor to assist with and assume responsibility for certain HIPAA and HITECH Act compliance obligations, to the extent they relate to information held by Subcontractor.

1. General Terms and Conditions
 - (a) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and subparts A and E of part 164.
 - (b) "Security Rule" shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 160 and subparts A and C of part 164.
 - (c) Capitalized terms used but not otherwise defined in this BA Agreement shall have the same meaning as those terms in the Privacy Rule and Security Rule, including 45 CFR §160.103 and 164.501.
2. **Obligations and Activities of Subcontractor**
 - (a) Subcontractor agrees to not use or disclose Protected Health Information other than as permitted or required by this BA Agreement or as Required By Law.
 - (b) Subcontractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BA Agreement.
 - (c) Subcontractor agrees to report to Business Associate's Privacy Official, within five (5) business days, any use or disclosure of the Protected Health Information not provided for by this BA Agreement, including the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed by the Subcontractor to have been, accessed, acquired, or disclosed during such breach.
 - (d) Subcontractor agrees to ensure that any agent or subcontractor to whom it provides Protected Health Information received from, or created or received by Subcontractor on behalf of Business Associate, agrees in writing to the same restrictions and conditions that apply through this BA Agreement to Subcontractor with respect to such information.
 - (e) To the extent Subcontractor has Protected Health Information in a Designated Record Set, Subcontractor agrees to provide access to Protected Health Information in a Designated Record Set to Business Associate in order to meet the requirements under 45 C.F.R. § 164.524, including provision of records in electronic form to the extent required by the HITECH Act.
 - (f) Subcontractor agrees to make any amendment(s) to Protected Health Information in its possession contained in a Designated Record Set that Business Associate directs or agrees to pursuant to 45 C.F.R. § 164.526, at the request of Business Associate.
 - (g) Subcontractor agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Subcontractor on behalf of Business Associate, available to Business Associate and/or the Secretary, in a time and manner designated by the Business Associate and/or the Secretary, as applicable, for purposes of determining Business Associate's compliance with HIPAA or the HITECH Act.
 - (h) Subcontractor agrees to document such disclosures of Protected Health Information in its possession and information related to such disclosures as would be required for Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and the HITECH Act.
 - (i) Subcontractor agrees to provide to Business Associate information collected in accordance with Section 2(h) of this BA Agreement, to permit Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and the HITECH Act.
 - (j) Subcontractor agrees to, subject to subsection 4(c)(2) below, return to the Business Associate or remove from access to any third party, within fifteen (15) days of the termination of this Agreement, the Protected Health Information in its possession.
 - (k) Subcontractor agrees to mitigate, to the extent practicable, any harmful effect that is known to either party, of a use or disclosure of Protected Health Information in violation of this BA Agreement.
 - (l) Subcontractor agrees to indemnify, insure, defend and hold harmless Business Associate and Business Associate's employees, directors, officers, subcontractors, affiliates, agents, and members of its Workforce, each of the foregoing hereinafter referred to as an "indemnified party," against all actual and

direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this BA Agreement or of any warranty hereunder or from any negligence, wrongful acts, or omissions, including the failure to perform its obligations under HIPAA, as well as the additional obligations under the HITECH Act, by Subcontractor or its employees, directors, officers, subcontractors, agents, or members of its workforce. This includes, but is not limited to, expenses associated with notification to individuals and/or the media in the event of a breach of Protected Health Information held by Subcontractor. Accordingly, on demand, Subcontractor shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from the indemnifying party's breach hereunder. The provisions of this paragraph shall survive the expiration or termination of this BA Agreement for any reason.

(m) In addition to its overall obligations with respect to Protected Health Information, to the extent required by the Security Rule, Subcontractor will:

1. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information (E PHI) that it creates, receives, maintains, or transmits on behalf of Business Associate as required by HIPAA;
2. Ensure that any agent or subcontractor to whom it provides such E PHI agrees in writing to implement reasonable and appropriate safeguards to protect the E PHI; and
3. Report to Business Associate any Security Incident of which it becomes aware.

(n) Except as otherwise allowed in this BA Agreement, HIPAA, and the HITECH Act, Subcontractor shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual unless the Individual has provided a valid, HIPAA-compliant authorization.

(o) Subcontractor shall use and disclose only the minimum necessary Protected Health Information to accomplish the intended purpose of such use, disclosure or request. Prior to any use or disclosure, Subcontractor shall determine whether a Limited Data Set would be sufficient for these purposes.

(p) Business Associate, in its sole and absolute discretion, may elect to delegate to Subcontractor the requirement under HIPAA and the HITECH Act to notify affected Individuals of a breach of unsecured Protected Health Information if such breach results from, or is related to, an act or omission of Subcontractor or the agents or representatives of Subcontractor. If Business Associate elects to make such delegation, Subcontractor shall perform such notifications and any other reasonable remediation services (i) at Subcontractor's sole cost and expense, and (ii) in compliance with all applicable laws including HIPAA and the HITECH Act. Subcontractor shall also provide Business Associate with the opportunity to review and approve of the form and content of any breach notification that Subcontractor provides to Individuals.

(q) Subcontractor agrees to comply with the following:

- i. Sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements) of the Security Rule shall apply to Subcontractor in the same manner that such sections apply to Business Associate. The additional requirements of the HITECH Act that relate to security and that are made applicable with respect to Covered Entities shall also be applicable to Subcontractor and shall be and by this reference hereby are incorporated into this BA Agreement.
- ii. Unless Business Associate agrees, in writing, that this requirement is infeasible with respect to particular data, Subcontractor shall secure all Protected Health Information by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the Secretary specifying the technologies and methodologies that render Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by the HITECH Act.
- iii. Subcontractor may use and disclose Protected Health Information that Subcontractor obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of Section 164.504(e) of the Privacy Rule, relating to business associate contracts. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable with respect to Business Associate shall also be applicable to Subcontractor and shall be and by this reference hereby are incorporated into this BA Agreement.
- iv. In accordance with Section 164.504(e)(1)(ii) of the Privacy Rule, each party agrees that, if it knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligation under the BA Agreement, the non-breaching party will take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the contract or arrangement, if feasible, or if termination is not feasible, report the problem to the Secretary.

(r) Subcontractor represents and warrants that, as of the effective date of this BA Agreement, Subcontractor has implemented compliance programs, including written policies and procedures, designed to ensure compliance with all Business Associate Agreements, as well as applicable state and federal privacy laws. These policies and procedures include, but are not limited to, policies related to mitigation of security breaches, training employees, documenting disclosures as required for an "accounting" (as that term is defined in HIPAA and as contemplated by subsection 2(h) and (i) of this BA Agreement), and maintaining the physical and technical security of electronic data, including encryption. Subcontractor represents and warrants that it is currently conducting its business in material compliance with all applicable laws governing the privacy, security or confidentiality of individually identifiable health information and/or other records generated in the course of providing or paying for health care services.

3. Permitted Uses and Disclosures of Protected Health Information by Subcontractor
3.1 General Use and Disclosure Provisions

Except as otherwise limited in this BA Agreement, Subcontractor may use or disclose Protected Health Information obtained from or on behalf of Business Associate to perform functions, activities, or services for, or on behalf of, Business Associate as specified in this BA Agreement, provided that such use or disclosure complies with HIPAA. Subcontractor acknowledges and agrees that it acquires no title or rights to the Protected Health Information as a result of this BA Agreement.

3.2 Specific Use and Disclosure Provisions

(a) Subcontractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Business Associate and fulfill its obligations under any underlying agreement with Business Associate, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by the Business Associate.

(b) Subcontractor may use and disclose Protected Health Information for the proper and necessary management and administration of Subcontractor or to carry out the legal responsibilities of Subcontractor, provided that, as to any such disclosure, the following requirements are met:

(i) the disclosure is Required By Law; or

(ii) Subcontractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law, and the person notifies Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached.

4. **Survival and Termination**

(a) Survival

Subcontractor's obligations under this BA Agreement shall survive the termination of this BA Agreement and shall end when all of the Protected Health Information provided by Business Associate to Subcontractor, or created or received by Subcontractor on behalf of Business Associate, is destroyed or returned to Business Associate. If it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause

Upon Business Associate's knowledge of a material breach by Subcontractor, Business Associate shall provide written notice to Subcontractor and may terminate this BA Agreement and any underlying agreement with Subcontractor if Subcontractor does not cure the breach or end the violation within 30 days.

(c) Effect of Termination

(1) Except as provided below in paragraph 4(c)(2) of this BA Agreement, upon termination of this Agreement, for any reason, Subcontractor shall return or destroy all Protected Health Information received from Business Associate, or created or received by Subcontractor on behalf of Business Associate. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Subcontractor. Subcontractor shall retain no copies of the Protected Health Information.

(2) In the event that Subcontractor determines that returning or destroying the Protected Health Information is infeasible or is otherwise required by law or policy to be retained by Subcontractor and Subcontractor shall extend the protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible or unlawful, for so long as Subcontractor maintains such Protected Health Information. If it is infeasible for Subcontractor to obtain, from a subcontractor or agent, any Protected Health Information in the possession of the subcontractor or agent, Subcontractor must provide a written explanation to Business Associate and require the subcontractors and agents to agree in writing to extend any and all protections, limitations and restrictions contained in this BA Agreement to the subcontractors' and/or agents' use and/or disclosure of any Protected Health Information retained after the termination of this BA Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

5. **Interpretation and Amendment of this BA Agreement**

A reference in this BA Agreement to a section of the Privacy Rule means the section as in effect or as amended. Any ambiguity or inconsistency in this BA Agreement shall be resolved in favor of a meaning that permits Business Associate to comply with the Privacy Rule, the Security Rule, and the HITECH Act. The parties hereto agree to negotiate in good faith to amend this BA Agreement from time to time as is necessary for Business Associate to comply with the requirements of law and for Subcontractor to provide services to Business Associate. However, no change, amendment, or modification of this BA Agreement shall be valid unless it is set forth in writing and agreed to by both parties.

6. **No Third Party Rights/Independent Contractors**

The parties to this BA Agreement do not intend to create any rights in any third parties. The parties agree that Subcontractor is an independent contractor and not an agent of Business Associate.

7. **Notices**

Any notice required or permitted by this BA Agreement to be given or delivered shall be in writing and shall be deemed given or delivered if delivered in person, or sent by courier or expedited delivery service, or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile or electronic mail (if confirmed), to the address set forth below. Each party may change its address for purposes of this BA agreement by written notice to the other party.

Exhibit D – Consent

CONSENT / AUTHORIZATION AGREEMENT

I consent to have _____ (Home Health Care Provider or HHC) and Circadiance LLC (Circadiance) provide any and all examinations and data collection as prescribed by my prescribing physician. I consent to have the monitoring services provided for my child or other person in my care or guardianship (Patient). I consent to follow the policies and procedures relating to collection of the Patient's data and operation of any monitoring equipment, all as provided by HHC and which have been reviewed with me. I understand that the monitoring services may be terminated at my request, the prescribing physician's request, and/or HHC's request.

I understand that all information concerning the care of the Patient is confidential. I acknowledge receipt of the training in the use of the monitor and was given an opportunity to ask questions and voice concerns. I authorize HHC and/or Circadiance to use or disclose protected health information about the Patient to carry out health care monitoring operations. HHC and/or Circadiance may release information to or receive information from insurance companies, health plans, Medicare, Medicaid, or any other person or entity that may be responsible for paying or processing for payment any portion of the bill for these services; any person or entity affiliated with or representing for purposes of administration, billing, and quality and risk management; any hospital or other health care facility to which the Patient may be/has been admitted; any physician providing the Patient with care; family members and other caregivers who are part of the Patient's plan of care; licensing and accrediting bodies, and other health care providers in order to provide the monitoring services.

I authorize the payment be made to HHC on behalf of the Patient for services or equipment provided. I authorize HHC to submit claims directly to the relevant insurer for services provided and to provide any necessary information to such insurer, medical personnel, and any third party payor to acquire payment. I recognize that all services may not be covered or that reimbursement may be less than 100% of charges billed, in accordance with policy coverage. Therefore, I agree to be financially responsible for any balances on the Patient's account, including deductibles and/or co-payments. If payment from the insurance is not received by HHC within 30 days of billing or if the insurance claim is rejected, I understand and acknowledge that payment of the account becomes my responsibility.

Title to rental equipment remains with HHC. I agree to return the equipment to HHC when instructed to do so by HHC or the prescribing physician. I agree not to remove any identification on the equipment or attempt to transfer such equipment.

I agree that I am solely responsible for all damages and liability arising out of the use of the equipment except that resulting from HHC negligence or a defect in the equipment.

This Consent shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws principles. This Consent represents the entire agreement of the parties with respect to its subject matter. No modification, amendment, supplement to or waiver of any provision of this Consent shall be binding upon the parties hereto unless made in writing and duly signed by both parties.

I represent and warrant that I have the right to grant the rights contained in this Consent, I am the parent or legal guardian of the monitored Patient, and do not require the consent or knowledge of any other person. I have read this entire Consent and am fully familiar with its contents.

Signature: _____

Date: _____



Exhibit E –User Terms and Conditions including Business Associate Agreement

See DOC-000095.