



## MASTER AGREEMENT

**THIS MASTER AGREEMENT** (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between Net Health Systems, Inc., a Pennsylvania corporation with an address at 40 24<sup>th</sup> Street, Pittsburgh, Pennsylvania 15222 ("Net Health") and \_\_\_\_\_, an entity organized under the laws of \_\_\_\_\_ with an address at \_\_\_\_\_ ("CUSTOMER").

**WHEREAS**, Net Health owns proprietary software and CUSTOMER desires to obtain use and access of software from Net Health in accordance with the terms of this Agreement; and

**WHEREAS**, Net Health and CUSTOMER desire that this Agreement serve as the Master Agreement with respect to one or more purchase schedule(s) (each a "Purchase Schedule"), the first of which is attached hereto as Exhibit A, setting forth the Software (as such term is defined below), services, service fees and other terms applicable thereto.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, and intending to be legally bound hereby, the parties agree as follows:

### 1. SOFTWARE.

(a) Use and Access of Software. Subject to the terms, conditions and limitations set forth in this Agreement, CUSTOMER shall have the non-exclusive, non-transferable right to use and access the software more fully described in the applicable Purchase Schedule(s) (the "Software") for the term set forth therein, and to receive other related services, if any, supplied by Net Health hereunder for use by the designated sites and healthcare providers/users (each an "Authorized Site/Provider," set forth in the applicable Purchase Schedule.

(b) Limitations. Except as otherwise expressly set forth herein, CUSTOMER receives no right to copy, distribute, disseminate, modify, reverse engineer or license/sublicense the Software or any of component thereof. Payment of the Fees (as defined in Section 5) or any portion thereof does not entitle CUSTOMER, or any of its affiliates, independent contractors, or agents, to use the Software at any location other than an Authorized Site. Subject to the foregoing restrictions and the confidentiality obligations contained in this Agreement, CUSTOMER'S affiliates and those agents and subcontractors of CUSTOMER that have agreed in writing to abide by the terms and conditions of this Agreement may access and/or use the Software solely for CUSTOMER'S benefit hereunder. CUSTOMER at all times shall be responsible and liable to Net Health for any use of the Software by such affiliates, agents or subcontractors.

(c) Title & Ownership of Rights. Title to the Software and all additional programs developed by Net Health for CUSTOMER hereunder, and all copies thereof are proprietary to Net Health and title thereto remains with Net Health. In addition, CUSTOMER acknowledges that Net Health is the owner of all right, title and interest in the Software and in any derivative works of and improvements upon Software, regardless of

any assistance or involvement by agents or employees of CUSTOMER in any such improvements or derivatives.

(d) Acceptance of Software. CUSTOMER shall be deemed to have accepted the Software upon the earlier of (i) the completion of the training set forth in the applicable Purchase Schedule and/or the delivery to Net Health of a Certificate of Training Completion (a copy of which can be provided to CUSTOMER upon request); (ii) 30 days after the date upon which the Software first becomes available to CUSTOMER; or (iii) CUSTOMER's use of any component or functionality of the Software for patient, commercial or production purposes.

(e) Return of Data. For a period of ninety (90) days following the expiration of a Purchase Schedule Term, CUSTOMER may, in writing, request that Net Health return the data that CUSTOMER uploaded to the applicable Software during the term of the applicable Purchase Schedule, and Net Health will provide such data in a comma delimited text file within forty-five (45) days of such request, in exchange for the then-current fees for such service. After the expiration of such ninety (90) day period, Net Health shall have the right to destroy its copy of any such data without obligations of any kind to CUSTOMER.

## **2. INTERFACES.**

(a) Net Health agrees to build, as applicable, the interface(s) described in the applicable Purchase Schedule (the "Interface(s)"). All Interfaces are subject to Net Health's standard applicable Interface specifications. Requests to deviate from Net Health's standard applicable Interface specifications will be subject to additional development Fees.

(b) Interface Acceptance. Each Interface shall be deemed accepted by CUSTOMER as of the date Net Health makes the applicable Interface available to CUSTOMER for any patient, commercial or production use.

## **3. CONSULTING SERVICES.**

(a) Consulting Services. CUSTOMER agrees to accept, and Net Health agrees to provide certain personnel to perform consulting services ("Consulting Services"), if applicable, subject to the terms of this Agreement and as set forth on the applicable Purchase Schedule. Consulting Services may be performed via telephone and other forms of remote correspondence, and may include on-site meetings with CUSTOMER, as further specified in each Purchase Schedule.

(b) Independent Contractor/Relationship of the Parties. In connection with Net Health's performance of any Consulting Services, Net Health and each person provided by Net Health to CUSTOMER hereunder shall act solely as an independent contractor and nothing herein contained shall at any time be so construed as to create a relationship of employer and employee, partnership, principal and agent, or joint venture as between CUSTOMER and Net Health or between CUSTOMER and any person provided by Net Health to CUSTOMER hereunder. CUSTOMER will report the amounts paid to Net Health in accordance with applicable tax laws.

## **4. TERM AND TERMINATION.**

(a) General. The term of this Agreement (“Term”) shall commence on the Effective Date and shall remain in effect for the balance of any Purchase Schedule Term, subject to earlier termination in accordance with this Agreement.

(b) Purchase Schedule Term. The initial term for each Purchase Schedule shall be as stated in the applicable Purchase Schedule (the “Purchase Schedule Initial Term”). Upon the expiration of the Purchase Schedule Initial Term, unless otherwise provided in the Purchase Schedule, the term shall automatically renew for successive one (1) year terms commencing on the day after the expiration of the then current Term (each a “Purchase Schedule Renewal Term” and together with the Purchase Schedule Initial Term, the “Purchase Schedule Term”) at the Fees set forth in Section 5(b) of this Agreement, unless either party elects to terminate the applicable Purchase Schedule at the end of the Purchase Schedule Initial Term or a Purchase Schedule Renewal Term by giving the other party written notice of such election at least ninety (90) days before the expiration of the then-current Purchase Schedule Term.

(c) Termination. If CUSTOMER commits a material breach of this Agreement, or Purchase Schedule, and persists in such failure for a period of thirty (30) days after receiving written notice thereof from Net Health, Net Health may terminate this Agreement, or Purchase Schedule, as applicable, upon written notice to CUSTOMER and CUSTOMER shall pay all remaining Fees from the date of termination to the end of the current Term. If Net Health commits a material breach of this Agreement, or Purchase Schedule, and persists in such failure for a period of thirty (30) days after receiving written notice thereof from CUSTOMER, CUSTOMER may terminate this Agreement, or Purchase Schedule, as applicable.

## 5. PAYMENT.

(a) General. In consideration of the Software, Interface(s) Consulting Services, or other services provided by Net Health pursuant to this Agreement, CUSTOMER shall pay to Net Health the amounts provided for in the applicable Purchase Schedule (the “Fee(s)”) and in accordance with the payment terms set forth in this Agreement and in the applicable Purchase Schedule(s).

(b) Renewal & Third-Party Fees. For any Renewal Term for either Software, Interfaces and/or maintenance and support fees in connection therewith, the Fees shall be Net Health’s then-current Fees. In addition, Net Health may increase Fees at any time in an amount equal to any charges imposed by third parties for any third party components used in connection with the applicable Software, or Interfaces.

(c) Set Up and Training Fees, Expenses. Unless otherwise provided in the applicable Purchase Schedule, CUSTOMER shall pay to Net Health a one-time fee stated in the attached Purchase Schedule for setup of the Software and for the onsite training at the applicable Authorized Site. If CUSTOMER chooses any Saturday or Sunday training, it will cost an additional \$500.00 per day payable to Net Health. If CUSTOMER cancels or reschedules training less than fifteen (15) days prior to the scheduled date of such training, the CUSTOMER will be charged the greater of (i) a \$2500.00 fee with respect to each such cancelled or rescheduled training, or (ii) an amount equal to the monthly Fees for the applicable Software during the length of any such delay in training. CUSTOMER shall also reimburse Net Health for all expenses incurred by Net Health in providing the training, including, but not limited to, travel, airfare, hotel, mileage, transportation, meals, etc. (to the extent such expenses are acceptable under Net Health’s Travel Policy). Expenses will be invoiced as incurred and payment is due upon receipt.

(d) Taxes Not Included. To the extent applicable, the Fees listed in any Purchase Schedule do not include taxes, duties, or other fees, and CUSTOMER shall reimburse Net Health for all such taxes appropriately assessed and paid related to any Software or services provided pursuant to this Agreement, except for those taxes based on Net Health's net income.

(e) Late Payment. If any of the Fees are not paid to Net Health by CUSTOMER when due, then the Software, Consulting Services and Interfaces may not become available to CUSTOMER until such Fees are paid in full. Payments not made when due will be subject to interest charges at a rate equal to the lesser of one and one-half percent (1.50%) per month, or the maximum rate allowable by law and will accrue monthly on all outstanding balances until paid. CUSTOMER shall be responsible for paying all costs of collection, including reasonable attorneys' fees, and where lawful, collection agency fees. If payment is not received within sixty (60) days of such payment due date, any and all warranties provided pursuant to the terms of this Agreement shall be voided, and any support and implementation services provided to CUSTOMER pursuant to the terms of this Agreement will be suspended until payment is received. Furthermore, CUSTOMER is aware that in the event CUSTOMER fails to pay all amounts due to Net Health in accordance with the terms and conditions of this Agreement, Net Health will provide CUSTOMER with a copy of its data in a comma delimited file, and CUSTOMER'S access to the Software will be disabled. CUSTOMER ACKNOWLEDGES AND AGREES THAT NET HEALTH SHALL NOT BE LIABLE FOR ANY LOSSES OF TIME, OR FOR ANY OTHER DAMAGES THAT MAY RESULT IN ANY WAY FROM THE DISABLING OF ACCESS TO THE SOFTWARE PURSUANT TO THIS SECTION. Warranties, support, and implementation services, if any and as applicable, shall be fully reinstated when CUSTOMER'S payment is received in full. Except for termination by CUSTOMER in accordance with this Agreement, all payment obligations under this Agreement are non-cancelable and non-refundable. In addition to disabling access to the Software, Net Health reserves the right to pursue all remedies as may be available to it at law or in equity.

## **6. CUSTOMER RESPONSIBILITIES.**

(a) CUSTOMER shall be responsible for the following, unless otherwise set forth in the applicable Purchase Schedule: adherence to specified system requirements; running and maintaining all computer network and internet connections necessary for CUSTOMER to use the Software; and all data conversion (if applicable).

(b) CUSTOMER will participate fully in the implementation of the Software, including attending training sessions, performing applicable file builds, and complying with other reasonable Net Health instructions regarding the implementation. In no event shall CUSTOMER delay the start of implementation of the applicable Software beyond sixty (60) days after the applicable Purchase Schedule Effective Date. In the event CUSTOMER delays the completion of the implementation of the Software or Interface(s) beyond six months from the applicable Purchase Schedule Effective Date, for each month thereafter until the Software or Interface(s) is fully implemented and accepted by CUSTOMER, CUSTOMER shall pay to Net Health one-half of the monthly Fees due for the Software or Interface, as applicable.

(c) Net Health will not be responsible for any issues resulting from CUSTOMER'S failure to comply with the parties' mutually agreed upon plan for implementing the Software.

(d) CUSTOMER will fully cooperate with Net Health in its performance of the Consulting Services, if applicable, and will at all times provide Net Health with at least one reliable point of contact for

purposes of overseeing the Consulting Services. CUSTOMER contact shall possess the skill, knowledge, and/or experience necessary to oversee, engage and understand the Consulting Services.

(e) CUSTOMER will fully evaluate the adequacy and applicability of the advice and practices provided by Net Health to CUSTOMER during the Consulting Services, if applicable, prior to CUSTOMER adopting or implementing the advice or practices into its business and operations.

(f) CUSTOMER assumes all responsibility and liability for the results of its adoption and implementation of the advice and practices provided by Net Health during the Consulting Services, if applicable.

(g) CUSTOMER acknowledges that the Software may use, incorporate or access Third Party Products, or that CUSTOMER may use, incorporate or access Third Party Products in conjunction with CUSTOMER's use of the Software, or any other product or service provided to CUSTOMER by Net Health. To the extent that CUSTOMER uses, incorporates or accesses any Third Party Products that are provided by Net Health to CUSTOMER, CUSTOMER acknowledges that continued usage of such Third Party Product(s) is contingent on Net Health's continued relationship with such Third Party Product vendor and that such use may be subject to additional terms and conditions of the applicable Third Party Product vendor. To the extent CUSTOMER uses, incorporates or accesses any Third Party Products that are not provided by Net Health to CUSTOMER, CUSTOMER represents it has obtained and covenants it will obtain the necessary rights or licenses from the applicable third party vendors to use such Third Party Products and agrees that Net Health shall not be liable for CUSTOMER's failure to obtain such rights or licenses. Net Health makes no representation or warranty with respect to any such Third Party Products. Net Health shall not be liable for any damages, costs, or expenses, direct or indirect, arising out of the performance or failure to perform of Third Party Products. "Third Party Products" includes, but is not limited to, any product, technology, tool, database, software, works, coding scheme or other intellectual property developed or owned by a third party.

(h) CUSTOMER agrees that it shall use the Software solely in a manner that complies with this Agreement and all applicable laws.

## **7. CONFIDENTIALITY.**

(a) CUSTOMER acknowledges that the Software contains proprietary information of Net Health, and such information is deemed confidential/proprietary information, the disclosure of which is restricted by this section. CUSTOMER agrees to maintain the confidentiality of the Software in a manner using at least as great a degree of care as the manner used to maintain the confidentiality of CUSTOMER'S own confidential information. Unless otherwise permitted by this Agreement, CUSTOMER shall not disclose any of Net Health's confidential or proprietary information to any third party without the prior written consent of Net Health. CUSTOMER further agrees that the confidentiality obligations contained herein shall apply to CUSTOMER's agents and employees that utilize the Software, and that CUSTOMER is wholly responsible for its user's compliance with this provision.

(b) CUSTOMER, its authorized affiliates, agents, and subcontractors shall not sell, transfer, publish, disclose, display, reverse engineer, or otherwise make available to others the Software or any other material relating to the Software. CUSTOMER shall protect the Software, and any other material relating to the Software, from unauthorized access and use, including using passwords made known only to

CUSTOMER'S employees who use the Software as a regular part of their employment and giving its employees written notification of the requirements of this section. CUSTOMER shall advise Net Health immediately if CUSTOMER learns or has reason to believe that any of CUSTOMER'S employees, agents, independent contractors, or affiliates has violated or intends to violate the terms of this section, and CUSTOMER will cooperate with Net Health in seeking injunctive or other equitable relief against any such person including giving Net Health access to all relevant documents and the opportunity to interview CUSTOMER'S employees.

**8. USE OF DE-IDENTIFIED DATA.** In further consideration of the CUSTOMER's use and access of the Software, Net Health may use in its business, on a perpetual, irrevocable basis, without obligation to CUSTOMER, de-identified patient data and information that is collected and uploaded to the Software including, but not limited to, patients' gender, age, medical histories and treatment (collectively, the "Data") for, among other things, the purpose of compiling aggregate wound and patient recovery profiles. Under no circumstances shall Net Health use or disclose personal health information except in the de-identified form as described above and in compliance with HIPAA. Net Health's use of the Data is necessary for Net Health to, among other things (i) compare treatment costs before and after use of Software, and (ii) use such comparisons to market the Software to potential Net Health customers.

**9. PUBLICITY.** Following execution of this Agreement and during the Term hereof, Net Health shall be permitted to utilize CUSTOMER'S name and logo in marketing materials, customer lists, and in press releases noting that CUSTOMER is a Net Health customer.

**10. PRODUCT SUPPLY.** As applicable, Net Health will enable CUSTOMER to electronically transmit product orders for direct delivery on behalf of CUSTOMER.

**11. WARRANTY DISCLAIMER; LIMITATION OF LIABILITY.**

(a) THE WARRANTIES PROVIDED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY NET HEALTH. NET HEALTH MAKES AND CUSTOMER RECEIVES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION, REGARDING THE SOFTWARE OR ANY MAINTENANCE OR SUPPORT SERVICES RELATED THERETO, DEVELOPMENT, INTERFACES OR CONSULTING SERVICES AND NET HEALTH SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) In no event shall Net Health be liable to CUSTOMER for any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against CUSTOMER, even if Net Health has been advised of the possibility of such damages. Net Health's total liability with respect to all causes of action together will not exceed the total amount of Fees paid by CUSTOMER to Net Health under the applicable Purchase Schedule in the twelve (12) months before such claim arose.

**12. GOVERNING LAW AND JURISDICTION.** This Agreement and all Purchase Schedules and Exhibits attached hereto shall be governed and construed in all respects in accordance with the laws of the Commonwealth of Pennsylvania without regard to any conflict of laws principles. Any disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Allegheny

County, Pennsylvania, each party hereby consents to the jurisdiction of such courts, and neither party shall bring any action hereunder in any other court.

**13. EXHIBITS.** Any exhibit appended to this Agreement is hereby incorporated herein by reference.

**14. FORCE MAJEURE.** Net Health shall not be liable for breach of this Agreement, or any Purchase Schedule, caused by circumstances beyond Net Health's reasonable control.

**15. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

**16. NOTICES.** All notices required by this Agreement shall be in writing and shall be delivered by hand, United States Postal Service certified mail, or overnight courier to the other party at such party's address set forth in the opening paragraph of this Agreement, or to such other address as each party may designate in writing.

**17. INTEGRATION.** This Agreement, including all Exhibits attached hereto, constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior representations, proposals, discussions, and communications, whether oral or written. This Agreement may be modified only by a writing signed by both parties.

**18. SURVIVAL.** Sections 1(c), 4, 5, 6, 7, 8, 11, 12 and this Section 18 shall survive any termination or expiration of this Agreement.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed effective as of the Effective Date.

**NET HEALTH SYSTEMS, INC.**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Patrick L. Colletti

Name: \_\_\_\_\_  
[Print Name]

Title: President & COO

Title: \_\_\_\_\_  
[Print Title]

Date: \_\_\_\_\_

Date: \_\_\_\_\_





**EXHIBIT D  
TO  
MASTER AGREEMENT**

**PURCHASE SCHEDULE**