

VIRENCE LICENSE AND SERVICES AGREEMENT

IMPORTANT – PLEASE READ CAREFULLY THE TERMS OF THIS VIRENCE LICENSE AND SERVICES AGREEMENT. This Agreement sets forth the legally binding terms for use of Software and Services (as defined below). This Agreement (as defined below) is between VVC Holding LLC (“Virence”) and the company or entity on whose behalf you are accepting this Agreement (“Customer”). This Agreement applies solely to Customer’s access to and use of the Products and Services (as defined below).

BY USING THE SOFTWARE AND SERVICES YOU ARE INDICATING YOUR ACCEPTANCE AND AGREEING TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER TO THE TERMS OF THIS AGREEMENT. BY AGREEING TO THE TERMS OF THIS AGREEMENT OR BY ACCESSING, USING OR INSTALLING ANY PART OF THE PRODUCTS OR SERVICES, CUSTOMER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO ANY OF THE TERMS OF THIS AGREEMENT, CUSTOMER IS PROHIBITED FROM DOWNLOADING, INSTALLING, ACTIVATING OR USING THE PRODUCTS OR SERVICES. THE EFFECTIVE DATE OF THIS AGREEMENT IS THE DATE SET FORTH ON A QUOTATION OR, IF EARLIER, THE DATE ON WHICH CUSTOMER DOWNLOADS, INSTALLS, ACTIVATES OR USES THE PRODUCTS OR SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, VIRENCE MAY UPDATE THE TERMS SET FORTH IN THIS VIRENCE LICENSE AND SERVICES AGREEMENT (INCLUDING EXHIBIT A AND THE SUPPLEMENTAL TERMS) FROM TIME TO TIME AND SUCH TERMS SHALL BE EFFECTIVE WHEN POSTED TO www.athenahealth.com/VirenceLicenseTerms.

1. Definitions.

“**Agreement**” means this Virence License and Services Agreement, Exhibit A, the Supplemental Terms and each Quotation, each of which is incorporated by reference herein.

“**Affiliated Entity**” means third-party entities that (a) Customer directly or indirectly controls, or with which Customer is under common control; (b) Customer will access and use the Products and/or Services on behalf of pursuant to the terms of this Agreement; and (c) are medical practices or laboratories that are set forth in this Agreement (in a Quotation or similar form signed by authorized representatives of each Party and incorporated herein).

“**Applicable Law**” means all federal, state, and local laws and regulations, including those relating to kickbacks, consumer protection, fraud and abuse, confidentiality (including HIPAA), Medicaid, and Medicare, in each case to the extent directly applicable to the respective Party’s performance of its obligations under this Agreement.

“**Authorized Users**” means those users (a) who are designated by Customer in the Products and/or Services and who are (i) employees of Customer, or (ii) other individuals, corporations, or entities that are not, and are not affiliated with, competitors of Virence, and have a valid HIPAA business associate agreement or other agreement with Customer, (b) who have been granted access to the Products and/or Services by Customer in its exercise of reasonable discretion relating to the use of the Products and/or receipt of Services hereunder by Customer, and (c) from whom Customer has obtained reasonable assurances that they will comply with the terms of this Agreement, including but not limited to, those relating to access and use and confidentiality.

“**Change of Control**” means any transaction resulting in the holders (together with their affiliates) of a majority of the voting securities, membership interest or right to appoint a majority of the members of the board of directors or similar governing body of such Party as of immediately prior to such transaction, holding less than such a majority as of immediately after such transaction.

“**Confidential Information**” means information that is disclosed by one Party to the other and that the receiving Party knows is confidential to the disclosing Party or that is of such a nature that someone familiar with the type of business of the disclosing Party would reasonably understand is confidential to it. Confidential Information includes this Agreement, any information concerning the disclosing Party’s finances, pricing, customers, business plans, business information, services, proposed new services and concepts, market research, trade secrets, employees, proprietary systems (including, with respect to Virence, any copy or visual depiction of Products, Services or Documentation), information technology systems and software, financial data and operating procedures, and any third party confidential and proprietary information (e.g., computer software and related information), including with respect to Virence, Virence Property. Notwithstanding the foregoing, Confidential Information does not include PHI or information that the receiving Party can demonstrate: (a) is in the public domain or is generally publicly known through no improper action or inaction by the receiving Party; (b) was rightfully in the receiving Party’s possession or known by it prior to receipt from the disclosing Party; (c) is rightfully disclosed without restriction to the receiving Party by a third party without violation of obligation to the disclosing Party; or (d) is independently developed for the receiving Party by third parties without use of the Confidential Information of the disclosing Party.

“**Customer Data**” means all data and information that is (a) provided by or on behalf of Customer or its Authorized Users to Virence or (b) entered into the Products and/or Services by or on behalf of Customer, in each case that is intended for use with the Products and/or Services in connection with this Agreement. Customer Data does not include Customer PHI nor Source Data.

“**Customer PHI**” means PHI that Virence receives from or on behalf of Customer or creates on behalf of Customer. Use and disclosure of Customer PHI is governed by the terms of Exhibit A.

“**Documentation**” means the user manuals, on-line help functions and user instructions, regarding the operation, installation and use of the Products and/or Services as made available by Virence to Customer.

“**Effective Date**” is defined in the applicable Quotation.

“**Error**” means the failure of the Virence Software to perform substantially in accordance with the Documentation.

“Force Majeure Event” means, with respect to a Party, any event or circumstance, whether or not foreseeable, that was not caused by that Party and any consequences of that event or circumstance.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and associated regulations, as may be amended from time to time.

“Live” means (unless defined otherwise in a Quotation) the date the Software is ready for use in a production environment or completion of the services (for services provided subsequent to the initial Live date).

“Party” means Virence or Customer. **“Parties”** means Virence and Customer.

“PHI” means “protected health information” as that term is used under HIPAA.

“Product(s)” means Virence or third party equipment, hardware or Software provided by Virence to Customer pursuant to this Agreement.

“Quotation” or **“Quote”** means the schedules, exhibits and addenda attached hereto or attached to a change order listing the Products and Services purchased by Customer in accordance with this Agreement.

“Services” means Product support and/or professional services provided by or on behalf of Virence to Customer pursuant to this Agreement.

“Software” means the Virence Software and the Third Party Software and associated Documentation provided by Virence to Customer pursuant to this Agreement.

“Supplemental Terms” means the Virence Supplemental Terms set forth at virencehealth.com/virencesupplementalterms.

“Third Party Software” means third party software and/or services that are made available by Virence to Customer pursuant to a Quotation.

“Virence” is VVC Holding LLC, 80 Guest St., Boston, MA 02135; Tel: 617.402.1000; Fax: 617.402.1099.

“Virence Property” means (a) all Products, Services, Documentation, deliverables, proprietary methods, templates, spreadsheets, databases and other electronic tools created, licensed or owned by Virence, (b) all data and information in the Products and Services that Virence compiles, sorts, integrates, normalizes, analyzes, maps, processes, selectively aggregates or combines with multiple disparate data sources, for comparison, benchmarking or other lawful purposes, as well (c) as improvements, additions, modifications, interfaces, and derivative works prepared from or relating to any of the foregoing, (d) any and all tangible and intangible works of authorship, copyrights, patents, trademarks, trade secrets and trade dress, and (e) all intellectual property rights in any of the foregoing.

“Virence Software” is software identified on the Software schedule as athenaIDX, athenaIDX for Group Management, athenaEDI, athenaPractice, or athenaFlow software.

2. Software License. Subject to the license scope and other restrictions set forth in this Agreement and Customer’s payment of fees and compliance with all other terms and conditions of this Agreement, and except as specified otherwise in the applicable Quotation, Virence grants to Customer a non-exclusive, non-sublicensable and non-transferable, license to use the Software and Documentation solely for Customer’s internal business purposes during the term of this Agreement. Customer may permit its Authorized Users to use the Software consistent with this Agreement and not to exceed the number of Authorized Users set forth in this Agreement or the applicable Quotation; provided, however, that Customer shall be responsible for any acts of its Authorized Users. Independent contractors that supply products comparable to the Software shall not be provided access to the Software unless Virence has provided its prior written consent (which may be subject to any applicable conditions required by Virence, including any conditions that Virence deems appropriate to protect Confidential Information relating to the Software). To the extent Customer has an on-premise license to the Software, Customer may make a reasonable number of copies of the Software in machine-readable form solely for backup, training, testing or archival purposes, so long as applicable license fees are paid. Any copy of the Software made by Customer in accordance with the foregoing: (a) will remain the exclusive property of Virence; (b) be subject to the terms and conditions of this Agreement; and (c) must include all copyright or other intellectual property rights notices contained in the original.

Customer agrees to use any Third Party Software only together with the Virence Software, and to comply with all applicable restrictions on the use of that Third Party Software included in any click or shrink wrap license or of which Virence makes Customer aware. To the extent permitted by Applicable Law, licensors of Third Party Software shall be third-party beneficiaries of this Agreement with respect to products licensed to Virence by such licensors and sublicensed to Customer.

Customer agrees not to: (i) display, sublicense, transmit, distribute, rent, lease, loan, resell, provide service bureau or subscription services, sell, time share or otherwise transfer or make available the Software to any other person or entity, unless expressly provided otherwise under this Agreement; (ii) electronically transfer the Software outside the United States or outside Customer’s intranet or network dedicated for the Software, unless otherwise authorized in writing prior to such transfer by Virence; (iii) directly or indirectly decompile, disassemble, reverse engineer or otherwise attempt to learn the source code, structure, algorithms or ideas underlying the software or reduce the Software to human-perceivable form; (iv) modify or translate the Software or create derivative works based thereon, except that to the extent applicable, the Software may be configured as specifically permitted in the Documentation; (v) remove, obscure or modify any markings, labels or any notice of the proprietary rights, including copyright, patent and trademark notices of Virence or its vendors or licensors from any media or Documentation; or (vi) release the results of any testing or benchmarking of the Software without the prior written consent of Virence.

3. Affiliated Entities. Customer is responsible for all acts and omissions of any Affiliated Entity as if such acts and omissions were acts and omissions of Customer itself. Customer shall cause each Affiliated Entity to comply with all relevant terms and conditions of this Agreement relating to compliance with Applicable Laws, access and use, the provision of information or other inputs, and any other term or condition that by its nature or by context requires or implies participation of, or action by, an Affiliated Entity. Virence will not be

responsible for determining access levels of any Affiliated Entity personnel, either on its system or in response to communications requests from such personnel, and Customer and each Affiliated Entity will manage such access. Customer represents and warrants that: (a) each Affiliated Entity has appointed Customer as its sole and exclusive agent to (i) give and receive Notices required or allowed under this Agreement; (ii) administer and amend this Agreement on its behalf; and (iii) receive and pay invoices from Virence on its behalf as set forth herein; (b) each Affiliated Entity has appointed Customer as an agent to (i) give all instructions to Virence and provide Virence with all information on its behalf in connection with this Agreement, and any Products and Services; (ii) designate Authorized Users under this Agreement; and (iii) accept, approve, access and utilize all Products and/or Services on its behalf; (c) each Affiliated Entity has authorized and directs Virence to communicate information in connection with this Agreement to Customer as fully as if Customer was Affiliated Entity itself; and (d) Customer has arranged, and will arrange, its relationships with all Affiliated Entities in a manner that complies with Applicable Law. All claims against Virence arising out of or resulting from the Products and/or Services, an act or omission of Virence under this Agreement resulting in damages to Customer or any Affiliated Entity shall be filed against Virence by Customer on an Affiliated Entity's behalf and shall be subject to the terms of this Agreement. In no event shall any Affiliated Entity file a claim against Virence in connection with or arising in any way or in any degree from this Agreement, from the Products and/or Services, or otherwise from the acts or omissions of Virence. Each Party (1) agrees that Customer is the proper party for any claims brought under this Agreement, and (2) waives all objections it may have that Customer is not the proper party. Virence and Customer acknowledge and agree that Affiliated Entities are not third-party beneficiaries under this Agreement and obtain no rights by operation of this Agreement or as a result of the relationship between Virence and Customer.

4. Installation.

a. Virence's professional and installation services provided or identified in the Quotation will be performed in accordance with applicable Virence Documentation, agreed-upon project plans and/or Quotation(s), and are subject to the following additional provisions. Customer agrees to review the applicable Documentation, project plans and/or Quotation(s) and perform its obligations set forth in those materials.

b. Unless otherwise set forth in the applicable Quotation, any professional or installation services identified in the Quotation are non-cancelable and are a required component of the Quotation and of the overall consideration between Virence and Customer; if Customer cancels any professional or installation Services, Customer is required to pay the fees for any Software set forth in the applicable Quotation and to pay for any professional or installation Services which have been contracted for in the applicable Quotation.

c. Customer will prepare the location for the installation consistent with Virence's written specifications, Documentation, Applicable Law and the applicable Quotation(s). Customer will install necessary system cable and assemble any necessary equipment or hardware not provided by Virence, unless agreed otherwise in writing by the Parties. For Products that will be operated on or in connection with Customer supplied hardware or software, Customer is responsible for ensuring that its hardware and software conform with Virence's requirements as made available to Customer. Customer will be responsible for enabling the connectivity and interoperability between Customer supplied hardware or software or other systems or devices and the Products provided by Virence, including, without limitation, procuring and installing any modifications, interfaces or upgrades consistent with Virence's written specifications, Documentation and the applicable Quotation(s).

d. Customer is solely responsible for ensuring that Customer's network is adequate for the proper operation and performance of the Products and that it otherwise meets Virence's network configuration requirements (including requirements for preparation of Customer's site, remote interconnections and internet protocol address assignments) provided by Virence to Customer.

5. Professional Services.

a. Virence shall perform professional or installation Services contracted for and described in the applicable Quotation. Virence is responsible for the assignment of personnel to perform all such professional or installation Services and may make any change in staffing it deems necessary. A professional Services engagement set forth in a Quotation may only be modified pursuant to mutually agreed change control procedures. Changes to any such professional Services engagement may require a change in fees reflecting the change in scope and/or change in schedule of delivery of the professional Services and/or change in Customer's responsibilities.

b. If required by the applicable Quotation, Customer and Virence shall each designate a project manager who will be responsible for day-to-day communications regarding an applicable Quotation. The project managers will be responsible for the schedules and progress of work pursuant to the Agreement and will have the authority to act for the respective Parties in all aspects of the engagement. The project managers for the Parties will meet in person or via conference call as necessary. The responsibilities of the project managers include: (i) serving as the single point of contact for all departments in their organization participating in this project; (ii) administering the change-of-control procedure; (iii) participating in project status meetings; (iv) obtaining and providing information, data, decisions and approvals, within seven (7) working days of the other Party's request unless Virence and Customer mutually agree to an extended response time; (v) resolving deviations from project plans that may be caused by the Parties; (vi) helping to resolve project issues and escalating issues within the Parties' respective organizations, as necessary; (vii) monitoring and reporting project status on a regular basis to the respective organizations as appropriate; and (viii) providing and coordinating technical and specialist resources as necessary.

6. Customer Responsibilities. For the avoidance of doubt, if Customer's failure to perform its obligations in this Agreement, including but not limited to those set forth in [Section 6](#), prevents, delays or adversely impacts Virence's ability to perform its obligations in accordance with the terms of this Agreement, then Virence shall not be liable for such failure or delay. Customer agrees to:

a. Provide and maintain a suitable, safe and hazard-free location and environment for the Products and Services in material compliance with any written requirements provided by Virence or the applicable product vendors; perform recommended routine maintenance and operator adjustments; and ensure that any non-Virence provided service is performed by, and the Products are used by, qualified personnel in accordance with applicable Documentation.

b. Provide Virence prompt and unencumbered access to the Products, network cabling and communication equipment as necessary to perform Services. This access includes providing and maintaining connectivity to the Products (modem line, internet connection,

virtual private network persistent access, broadband internet connection, or other secure remote access reasonably requested by Virence) to permit Virence to perform Services and meet service levels, if any, including remote diagnostic, monitoring and repair services. Virence may separately charge Customer for a scheduled Service call where Customer does not provide such access and Virence is therefore required to schedule an additional Service call.

c. Provide a secure area reasonably near the Products, if any, located at a Customer site, for Virence's proprietary Service materials. Customer agrees to use reasonable efforts to protect all Virence Property against damage, loss or unauthorized access or use.

d. Ensure that each Authorized User complies with the terms of this Agreement and Applicable Law. Customer is responsible for all acts or omissions of any Authorized User in connection with such Authorized User's access or use of the Products and Services. Customer shall terminate any Authorized User's access to the Products and Services (i) when such person no longer meets the definition of "Authorized User;" (ii) if conduct by such Authorized User breaches any term of this Agreement; or (iii) upon such Authorized User's indictment, arrest, or conviction of any crime related to claims or other transactions, financial relationships, or financial dealings in connection with health care, and Customer shall immediately inform Virence of any such indictment, arrest, or conviction. Virence may restrict, suspend, or terminate an Authorized User's access to the Products or Services if Virence determines in its reasonable discretion that such access has an adverse effect on Virence. Customer shall require Authorized Users to protect their passwords and log in credentials.

e. Establish and maintain security, virus protection and backup for any data, images, Products or equipment. Virence's Services do not include disaster recovery or recovery of lost data or images (unless separately contracted for with Virence). Customer's responsibility includes maintaining secure network and network security components, firewalls and security-related hardware or software, preventing unauthorized access to the Products and preventing interception of communications between Virence's service center and the Products.

f. Obtain and maintain all licenses, permits, and other approvals necessary for installation of Products provided under this Agreement.

g. If applicable, be responsible for any Service necessitated by: (i) Customer's or its representative's designs, specifications, or instructions; (ii) anything external to the Products, including any causes or events beyond Virence's reasonable control; (iii) any misuse of any Product by Customer or any third party acting on behalf of Customer; (iv) combining any component of the Products with any incompatible equipment or software; or (v) Customer's relocation, additions, or changes to the Products.

h. Not use or permit the Products to be used in any manner that does not comply with Applicable Law.

7. Testing and Acceptance. To the extent applicable, an acceptance test for each unit or module of the Virence Software shall be initiated and conducted by Customer over a test period commencing not later than one (1) day after Virence gives notice of implementation of the Virence Software and ending upon the earlier of (a) thirty (30) days from commencement of the test period; or (b) Live (the "**Test Period**"). Acceptance tests will be conducted using test data, preferably from Customer's historical operations, in a non-productive environment and according to test protocol to be mutually agreed upon by the Parties. Customer shall be deemed to have accepted Virence Software upon the expiration of the Test Period identified in this paragraph if Virence did not receive written notice from Customer of the existence of any Errors and a detailed description of such Error(s). During the Test Period, upon discovering an Error, Customer shall promptly notify Virence in writing of the Error, which notice shall include a detailed description of the Error. During the Test Period, upon Virence's timely receipt of Customer's written notice of any Error(s), Virence shall promptly correct such failures identified by Customer therein. An acceptance test for amendments or alterations provided by Virence as a result of testing may be conducted by Customer for a period of not more than five (5) days after delivery of such amendment or alteration, and the Test Period shall be extended for this purpose. Upon the occurrence of acceptance, all payments associated with acceptance, if any, shall be due and payable.

8. Representations, Warranties and Remedies.

a. Virence warrants to Customer that, except as otherwise set forth in this Agreement:

i. Virence shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with industry standards for similar services and shall provide adequate resources to meet its obligations under this Agreement; and

ii. Virence will use commercially reasonable efforts consistent with industry standards to scan for and remove any viruses from the Virence Software before installation of such Virence Software; and

iii. for the ninety (90) days following the initial Live date of the applicable Virence Software ("**Software Warranty Period**"), such Virence Software will perform substantially in accordance with the applicable Documentation. The Software Warranty Period for any Virence Software or component furnished to correct a warranty failure will be the unexpired term of the warranty applicable to the repaired or replaced Virence Software.

The above warranties do not cover hardware, equipment or Third Party Software. Such Products may be covered by the third-party manufacturer/licensor/supplier's warranties, to the extent available. Virence will use commercially reasonable efforts to pass through to Customer any third party manufacturer/licensor/supplier warranties provided to Virence by such third party, provided that any such warranty shall only be valid if such warranty is explicitly set forth in the applicable Quotation.

b. Customer represents, warrants and covenants to Virence that:

i. (1) all data it provides to Virence or that it selects in the Products and Services, including, but not limited to, codes and practitioner identifiers, are accurate and in conformity with all Applicable Law; (2) its medical records appropriately support all codes that it enters, selects, or approves; (3) it and its personnel are duly authorized to enter and access such data; and (4) Virence is duly authorized to receive, use, and disclose such data subject to the terms of this Agreement;

ii. (1) it and its healthcare providers are, and will be, duly licensed and authorized to provide and bill for the health services they render; and (2) all technical requests, or other requests, waivers, or directives by or on behalf of Customer are and shall remain compliant with Applicable Law and all applicable payer requirements; and

iii. it is purchasing the Products for its own use consistent with the terms of this Agreement and that it does not intend to re-sell the Products to any other party or to export the Products outside the United States.

c. Each Party represents and warrants to the other Party on a continuing basis through the term of this Agreement that (i) it has the requisite corporate power and authority to execute and perform its obligations under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to bind it hereunder and that such Party's execution of this Agreement is not in violation of such Party's bylaws, certificate of incorporation or other comparable document; (iii) the execution, delivery, or performance of this Agreement will not violate or conflict with, require consent under, or result in any breach or default of (1) Applicable Law, or (2) any covenants or agreements by which such Party or any of its assets are bound; and (iv) neither it nor any of its personnel to its knowledge (1) has been convicted of any crime arising from claims or other transactions, financial relationships, or financial dealings in connection with health care, or (2) has been excluded from any federal or state health care program. In the event an employee performing Services under this Agreement is excluded, Virence will replace such employee within a commercially reasonable time. In the event Virence is excluded, Customer may terminate this Agreement upon written Notice to Virence.

d. **No Other Warranties.** *Except as expressly provided in Section 8(a) of this Agreement, Virence disclaims all representations and warranties of any kind or nature, express or implied (either in fact or by operation of law), with respect to any Product, Service, hardware, equipment, deliverable or other service or item provided hereunder, including, but not limited to, implied warranties of non-infringement, merchantability, or fitness for a particular purpose. Except as expressly provided herein, Products and Documentation are provided "as is." Virence does not warrant that any Products or deliverables will be error-free or will be provided (or available) without interruption or meet Customer's business or operational needs. Customer has not relied on any representations, warranties, or statements of fact not specifically included in this Agreement, and shall not assert, and shall cause its affiliates and personnel not to assert, any claim against Virence with respect to its or their reliance on any representations, warranties or statements of fact not specifically included in this Agreement. Virence is not responsible for the repair, replacement or removal of any disposables, consumables, supplies, accessories or collateral equipment on Customer's site(s) nor for the provision of or payment for any applicable rigging or facility cost.*

e. **Sole and Exclusive Remedies for Breach of Warranties.** *The remedies set forth below are Customer's sole and exclusive remedies and Virence's sole and exclusive liability for the warranty claims with respect to the warranties set forth in Section 8(a)(i) through Section 8(a)(iii). These exclusive remedies shall not have failed of their essential purpose as long as Virence remains willing to repair or replace defective warranted Products or re-perform any non-conforming Services for no charge, as applicable, within a commercially reasonable time after being notified of Customer's warranty claim.*

i. If there is any breach of a warranty contained in Section 8(a)(i) and Customer provides Notice to Virence of Customer's warranty claim within ten (10) days of the Services being performed, Virence will promptly re-perform any non-conforming Services for no charge.

ii. If there is any breach of a warranty contained in Section 8(a)(ii) and Section 8(a)(iii) and Customer promptly notifies Virence of Customer's warranty claim during the Software Warranty Period, Virence will, at its option, with respect to the Virence Software, either correct the non-conformity or replace the applicable the Virence Software; provided that Customer shall cooperate with Virence in good faith and provide all reasonable access in order for Virence to perform such correction or make such replacement.

f. **Limitations.** *Virence shall not have any obligation to Customer hereunder if the warranty claim results from or arises out of: (i) the use of the Software and/or Services in combination with any software, tools, hardware, equipment, supplies, accessories or any other materials or services not furnished by Virence or recommended in writing by Virence; (ii) the use of the Software and/or Services in a manner or environment, or for any purpose, for which Virence did not design or license it, or in violation of Virence's recommendations or instructions on use; or (iii) any alteration, modification or enhancement of the Software and/or Services by Customer or any third party not authorized or approved in writing by Virence. In addition, the warranties set forth above do not cover the Software and/or Services to the extent it is used in any country other than the United States. Virence does not guarantee that the Software and/or Services will operate without error or interruption. In addition, these warranties do not cover failure to maintain the Software and/or Services with all appropriate updates, inadequate back-up or virus protection or any cause external to the Software and/or Services or beyond Virence's reasonable control, including, but not limited to, power failure. Virence is not responsible for the repair, replacement or removal of any disposables, consumables, supplies, accessories or collateral equipment on Customer's site(s) nor for the provision of or payment for any applicable rigging or facility costs.*

9. Confidential Information. Each Party shall exercise reasonable care to hold Confidential Information in confidence and not use it or disclose it to any other person or entity, except (a) as permitted under this Agreement or as reasonably necessary for the performance or enforcement of this Agreement; (b) as agreed in writing by the other Party; (c) for the Party's proper management and administration (provided that it obtains reasonable assurances from all recipients that they will keep the information confidential and use it only for the purpose of its disclosure; and provided further that it is responsible for all acts and omissions of any such recipient in violation of this Section 9); or (d) as required by law. Any violation of this Section 9 may cause the non-violating Party irreparable and immediate harm and such Party is entitled to seek injunctive relief to prevent such violation.

10. Compliance.

a. Each Party shall comply with Applicable Law. Customer is solely responsible for compliance with all legal and regulatory requirements with respect to Customer's use of the Products and Services.

b. The Parties agree that (i) any fees charged or amounts paid hereunder are not intended to be an inducement or payment, either directly or indirectly, for the referral of patients or furnishing of other healthcare services to Customer or any third party, and (ii) neither Party will enter into any agreements or otherwise make any inducements or payments, either directly or indirectly, for the purpose of referring patients or furnishing other healthcare services to Customer or any third party.

c. The Parties shall each separately maintain effective compliance programs consistent with the relevant compliance guidelines set forth by the Office of the Inspector General of the Department of Health and Human Services. The Parties shall cooperate with each other to provide prompt, accurate, and full responses to any material inquiry or concern of either Party related to compliance and to any reasonable request by either Party for clarification, documentation, or further information concerning Customer billing or Customer's provision of, or referrals related to, health services for its patients.

d. Customer shall verify and is solely responsible for the accuracy, completeness, and appropriateness of all information entered into or selected in the Products and Services by it and its Authorized Users. The professional duty to treat the patient lies solely with Customer, and use of information contained in or entered into Products and Services or provided through the Products and Services in no way replaces or substitutes for the professional judgment or skill of Customer. Customer is responsible and liable for the treatment of patients as to whom Customer and its personnel access or use the Products and Services, including responsibility for personal injury or loss of life. Virence is not a health plan or healthcare provider and it cannot and does not independently review or verify the medical accuracy or completeness of the medical information entered into, or made available to it in, the Products and Services. Use of and access to the Products and Services, including, but not limited to, clinical information in the Products and Services, is at the sole risk and responsibility of Customer, Authorized Users, and any practitioner or healthcare provider or facility using data provided by Virence as part of the Products and Services. Although Virence and its third-party vendors have used reasonable care in obtaining information from sources believed to be reliable, Customer acknowledges that it is Customer's obligation to be informed about any changes in billing rules and regulations or to clinical information or guidelines that may not be reflected in the Products and Services. Virence will not be liable for any action or inaction of Customer which may give rise to liability under the federal False Claims Act or any state version thereof.

e. Virence may provide any Products and Services and perform any other obligation under this Agreement directly or through subcontractors or vendors (collectively, the "**Subcontractors**"). Virence shall be liable for all acts or omissions of its Subcontractors. Virence shall require any Subcontractor to maintain adequate and appropriate insurance coverage. Virence shall assess, monitor and mitigate risks that may arise from its use of any Subcontractors.

f. If Virence is required by Applicable Law, legal process, or government action to produce information or personnel as witnesses with respect to the Products, Services or this Agreement, Customer shall reimburse Virence for any professional time, fees, and expenses (including reasonable external and internal legal costs) incurred to respond to the request, unless Virence is a party to the proceeding or the subject of the investigation.

11. Ownership.

a. Virence and/or its licensors, as applicable, retain all ownership and intellectual property rights to Virence Property. Except as otherwise explicitly set forth herein, Customer shall not have any right, title or interest in or to Virence Property or any license or other right to access, use, or decompile Virence Property. If Customer acquires any rights to the Virence Property other than as explicitly set forth herein, Customer hereby assigns all of those rights to Virence or its licensors, as applicable. Customer agrees to provide reasonable assistance to Virence in obtaining and enforcing Virence's rights to Virence Property.

b. Any ideas, advice, recommendations, suggestions, enhancement requests, feedback or proposals provided by or on behalf of Customer or its personnel to Virence related to Virence Property ("**Feedback**"), (i) is given to Virence without claim of intellectual property right by Customer, (ii) by its receipt grants Virence a royalty free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to commercialize, use and incorporate such Feedback into its software, services or systems or use as it otherwise deems necessary or desirable in its business, and (iii) will not enable Customer to claim any interest in or ownership of Virence Property. As between Virence and Customer, Customer retains all right, title and ownership interest in and to Customer Data. Customer hereby grants to Virence a fully-paid up, worldwide, sub-licensable, perpetual, right and license to Customer Data for the purpose of creating Virence Property.

c. Virence and its subcontractors may access, collect, maintain, analyze, prepare derivatives from and otherwise use information about Products and/or Services that is not Customer PHI, including, but not limited to, machine, technical, systems, usage and related information ("**Source Data**") to facilitate the provision of Products and/or Services to Customer and for research, development and continuous improvement of Virence's products, software and services. Virence will own all discoveries, ideas, improvements, products, services, software, data, intellectual property and other rights arising from and/or related to Virence's and its Subcontractors' use, analysis, research and/or development of the Source Data.

12. Indemnification. Virence will indemnify and defend at its expense any claim, suit, or action ("**IP Claim**") brought against Customer or its directors, officers, or employees ("**Customer Indemnitees**"), and will pay any settlement Virence makes or approves, or any third party damages finally awarded in such IP Claim, to the extent such IP Claim by any third party not affiliated with a Customer Indemnitee arises out of an allegation that the Virence Software purchased by Customer from Virence pursuant to this Agreement ("**Indemnified Materials**"), when used properly and as expressly authorized by Virence, infringes upon any valid patent, registered copyright, or other registered intellectual property right under the law of the United States. If any portion of the Indemnified Materials becomes, or in Virence's opinion is likely to become, the subject of an IP Claim, Virence may, at Virence's option: (a) procure for Customer the right to continue using the applicable Indemnified Material; or (b) modify or replace the applicable Indemnified Materials with non-infringing software or services which do not materially impair the functionality of the applicable Indemnified Materials, provided that if neither (a) or (b) is commercially practicable for Virence, Virence may terminate this Agreement with respect to such Indemnified

Materials upon written notice to Customer, and following such termination, if the license to Customer was perpetual or if Customer paid for a term license up front, Virence will refund to Customer the purchase price of such applicable Indemnified Materials, pro-rated based on a seven (7) year straight line depreciation (or, with respect to a term license paid for up front, pro-rated based on the term length straight line depreciation). For clarity, if the license granted to Customer was a term license paid intermittently during the term, then Customer shall have no further obligation to pay license or support and maintenance fees for the applicable Indemnified Materials after the effective date of such termination. Notwithstanding the foregoing, Virence will have no obligation under this Section 12 or otherwise with respect to any IP Claim to the extent based upon or arising out of (i) any use of the Indemnified Materials in breach of this Agreement or any other agreement by, or any negligent or other wrongful act or omission of, any Customer Indemnitees or any party acting on behalf of Customer Indemnitees; (ii) any use of the Indemnified Materials in combination with other products, equipment, software or data not supplied by Virence; (iii) any modification of the Indemnified Materials by Customer; or (iv) any data, information, materials, content, or information provided by or on behalf of Customer or its users through the Software or otherwise to Virence. This Section 12 states the sole and exclusive remedy of Customer and the entire liability of Virence and its officers, directors, employees, shareholders, contractors, or representatives of the foregoing, for all IP Claims. Virence's obligations as set forth above are expressly conditioned upon each of the following: (1) Customer will promptly notify Virence in writing of any threatened or actual IP Claim, and will provide all reasonably available information about such IP Claim, as well as access to Customer's employees and personnel; (2) Virence will have sole control of the defense or settlement of any IP Claim (provided that Customer may, in its sole discretion and at its sole cost and expense, participate in the defense of any such IP Claim using attorneys selected by it, provided that such participation shall not interfere with Virence's control of the defense); and (3) Customer will cooperate with Virence to facilitate the settlement or defense of any IP Claim. Virence will obtain the prior written approval of Customer before entering into any settlement of any IP Claim that would impose additional obligations upon Customer.

13. Software Support Services. Virence will provide to Customer the software support services for the Virence Software as described in the Virence Software Support Policy for the support period specified in the applicable Quotation and for any subsequent renewal periods. Third Party Software support services are not covered under this Agreement unless specifically stated otherwise in the applicable Quotation. Customer is not entitled to any credits, refunds or reduction in support fees for any mid-term cancellation, termination or reduction of Virence Software support services. If Virence announces to its customers that it will no longer offer support for an entire Product or Service, or for a version module, suite or component of Products or Services, then upon at least twelve (12) months' prior written notice to Customer, Virence may, at its option, remove any such item from all Virence support services agreements, with an appropriate adjustment of charges, without otherwise affecting such agreements.

14. Terms of Payment.

a. Customer shall pay Virence the fees and expenses as set forth in the Agreement. Customer shall pay all invoices it receives from Virence within 30 days from the date of each such invoice. Actual, reasonable travel, living and incidental project related expenses incurred in the performance of any Services, including, but not limited to, travel, meals, lodging, car rental, telecommunications and other out-of-pocket expenses are in addition to the prices and fees in the Quotation and shall be invoiced separately as incurred. Customer is responsible for paying all such expenses as invoiced by Virence. Customer also agrees to pay all shipping, handling and insurance costs, which will be billed as incurred.

b. Failure to make timely payment is a material breach of this Agreement, for which (in addition to other available remedies) Virence may suspend performance under the Virence agreement at issue, including the provision of support and maintenance and/or licenses until all past due amounts are brought current. If Virence so suspends, Virence will not be responsible for the completion of planned services or support during the suspension period and any Product downtime will not be included in the calculation of any uptime commitment. Interest shall accrue on past-due amounts at a rate equal to the maximum rate permitted by Applicable Law. Customer will reimburse Virence for reasonable costs (including attorneys' fees) relating to collection of past due amounts. Any credits that may be due from Virence to Customer (as documented in writing and signed by authorized representatives of each Party) may be applied first to any outstanding balance. If Customer does not make payments for the Products and/or Services within forty-five (45) days after such payments are due, Virence may, upon ten (10) days' prior written notice to Customer: (a) temporarily disable the Products so that they are not operational; and/or (b) suspend all Services. Termination of this Agreement, disabling of Products, or suspension of Services by Virence associated with Customer's failure to pay amounts owed will not constitute irreparable harm to Customer.

c. Prices do not include sales, use, gross receipts, excise, valued-added, services, or any similar transaction or consumption taxes (collectively, "**Taxes**"). Customer acknowledges and agrees it shall be responsible for the payment of any Taxes to Virence. If Customer is tax exempt, Customer shall provide Virence with a valid exemption certificate upon the Effective Date. In the event Virence is assessed Taxes, interest and penalty by any taxing authority, Customer agrees to reimburse Virence for any Taxes, including any interest or penalty assessed thereon. Taxes, if applicable, are subject to correction. If no amount is shown, Taxes, if applicable, will be invoiced upon determination.

d. On or around each 12-month period for any Product or Service under this Quotation, Virence may increase the fees hereunder automatically by no more than CPI plus two percent (2%). CPI shall mean the U.S. City Average (December to December percent) for ALL Urban Consumers (CPI-U).

15. Limitation of Liability. *Virence's cumulative, aggregate liability in connection with or arising in any way or in any degree from this Agreement, from any Products or Services, or otherwise from the acts or omissions of Virence will not exceed: (a) for Products, the amounts paid by Customer with respect to such Product that is the basis for the claim; (b) for Services or subscriptions, the amount of the Service or subscription fees for the 12 months immediately preceding the action that is the basis for the claim; or (c) for any other claims under this Agreement, the total amount paid by Customer to Virence in the 12 months before such claim arose. Virence will not be liable for any failure to provide services, content, or functionality with respect to any claim, statement, or transaction that Virence believes in good faith arises from, in connection with, or contains inaccurate, misleading, or otherwise improper*

information. Notwithstanding anything to the contrary, Virence will not be liable for indirect, exemplary, punitive, special, incidental, or consequential damages or losses; additional overhead and payroll; lost profits or business opportunities; loss of data; or the cost of procurement of substitute items or services. Customer hereby acknowledges that the remedies set forth above are reasonable and will not fail of their essential purpose. No claim against Virence of any kind under any circumstances may be asserted or filed more than one year after Customer knows, or in the exercise of reasonable care could know, of any circumstances, whether by act or omission, that may give rise to such claim.

16. Term and Termination.

a. This Agreement will have a term of one year from the Effective Date and will automatically extend for additional consecutive one-year terms unless terminated as set forth below. For the avoidance of doubt, this Agreement shall remain in effect so long as there is a current active Quotation in effect between the Parties.

b. Either Party may terminate this Agreement (including any outstanding Quotation(s) and any perpetual licenses granted under this Agreement) effective upon Notice to the other Party if (i) the other Party defaults in performance of any material provision of this Agreement and such default is not cured within 30 days following Notice describing the specific default (10 days in the event of failure to pay amounts owed); (ii) the other Party violates Applicable Law; (iii) the other Party files a voluntary petition in bankruptcy or an involuntary petition is filed against it; (iv) the other Party is adjudged bankrupt; (v) a court assumes jurisdiction of the assets of the other Party under a federal reorganization act or other statute; (vi) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other Party; (vii) the other Party becomes insolvent, suspends business or ceases to conduct its business in the ordinary course; or (viii) the other Party makes an assignment of its assets for the benefit of its creditors. Termination of this Agreement by Virence for Customer's failure to pay amounts owed will not constitute irreparable harm to Customer.

c. Virence may terminate this Agreement for cause effective upon Notice if Customer (i) violates the warranties in Section 8(b) or Section 8(c), or (ii) violates any access and use provision set forth in this Agreement.

d. Upon termination of this Agreement or any Product or Service for any reason, Customer shall pay to Virence all amounts that are due hereunder in accordance with the terms of this Agreement.

17. Relief for Breach. Customer agrees that a violation of Virence's license, confidentiality or intellectual property rights will cause irreparable harm to Virence for which the award of money damages alone is inadequate. Customer agrees that in the event of any breach of any such provision, Virence shall be entitled to seek injunctive relief.

18. Audit Rights. At Virence's request, but not more frequently than once per year, Customer shall furnish Virence with a document signed by an authorized representative verifying Customer's usage of the Products and/or receipt of Services. If after receipt of such document Virence reasonably believes Customer is not in compliance with limitations of usage imposed under this Agreement or the applicable Quotation, then Virence may, upon at least thirty (30) days' prior Notice, audit Customer to confirm such compliance. Any such audit will be conducted during regular business hours and will not unreasonably interfere with Customer's business. If any such audit uncovers underpaid or unpaid fees owed to Virence, Customer agrees to pay those fees and Virence's reasonable costs incurred in conducting the audit within thirty (30) days of written notification of the amounts owed. If Customer does not pay the amounts owed, Virence may terminate any Products and/or Services contemplated under this Agreement.

19. Dispute Resolution.

a. **Mediation.** The Parties shall submit any and all disputes, claims, or controversies arising out of or relating to this Agreement, including any conduct related to or arising out of this Agreement following termination hereof (each a "**Dispute**") in the first instance to Judicial Arbitration and Mediation Services, Inc. ("**JAMS**"), or its successor, for mediation in Boston, Massachusetts. Either Party may commence mediation by providing to JAMS and the other Party a written request for mediation, which must set forth the subject of the Dispute, the relief requested, and the factual and legal bases for such relief. The Parties shall cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The Parties shall participate in the mediation in good faith and equally share the costs of the mediation. If the Dispute is not resolved through mediation, the Party seeking relief may pursue all remedies available at law, subject to the terms of this Agreement. Notwithstanding this Section 19(a), either Party may (i) terminate this Agreement according to its terms, or (ii) seek injunctive relief.

b. **Governing Law; Forum.** This Agreement and any Dispute will be governed exclusively by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws principles. The Federal District Court for the District of Massachusetts or the business litigation section of the state superior court of Massachusetts will be the exclusive venue for any resolution of any Dispute. The Parties hereby submit to and consent irrevocably to the jurisdiction of such courts for these purposes. ***The Parties hereby irrevocably waive any and all right to trial by jury in any legal proceeding arising out of any Dispute.***

20. Force Majeure.

a. If a Force Majeure Event prevents a Party from complying with any one or more obligations under this Agreement, that inability to comply will not constitute breach if (i) that Party uses reasonable efforts to perform those obligations; (ii) that Party's inability to perform those obligations is not due to its failure to (1) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event, or (2) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (iii) that Party complies with its obligations under Section 20(b).

b. During a Force Majeure Event, the noncomplying Party shall use reasonable efforts to limit damages to the other Party and to resume its performance under this Agreement.

21. Record Retention. To the extent Section 1861(v)(1)(I) of the Social Security Act is applicable to this Agreement, for a period of 4 years after the expiration or termination of the Agreement, Virence will make available, upon request from the Secretary of Health and Human Services, the Comptroller General of the United States or any of their duly authorized representatives, this Agreement and books,

documents and records of Virence that are necessary to verify the nature and extent of the costs of the services provided hereunder by Virence, in accordance with applicable United States government regulations in effect from time to time. If Virence carries out any of its duties under this Agreement through a subcontract with a related organization, the value or cost of which is \$10,000 or more over a 12-month period, such subcontract will contain a clause to the effect that until the expiration of 4 years after the furnishing of services pursuant to such subcontract, the related organization will make available, upon request from Secretary of Health and Human Services, the Comptroller General of the United States or any of their duly authorized representatives, the subcontract and books, documents and records of the related organization that are necessary to verify the nature and extent of such costs.

22. Contract Formation. In the event of conflict between the terms and conditions contained herein and the terms and conditions in the Quotation, the terms and conditions in the Quotation shall prevail with respect to the Products and/or Services set forth in such Quotation. The Parties agree that they have not relied on any oral or written terms, conditions, representations or warranties outside those expressly stated or incorporated by reference in this Agreement in making their decisions to enter into this Agreement. No agreement or understanding, oral or written, in any way purporting to modify this Agreement, whether contained in Customer's purchase order or shipping release forms, or elsewhere, shall be binding on Virence unless hereafter made in writing and signed by Virence's authorized representative. Customer is hereby notified of Virence's objection to any terms inconsistent with this Agreement and to any other terms proposed by Customer in accepting this Agreement. Neither Virence's subsequent lack of objection to any such terms, nor the delivery of the Products or Services, shall constitute an agreement by Virence to any such terms.

23. Assignment. Neither Party may assign this Agreement or any right under this Agreement, in each case by operation of law or otherwise, except as otherwise permitted hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, and any attempt to assign this Agreement or any right under this Agreement in breach of the provisions of this Section 23 shall be null and void. The foregoing notwithstanding either Party may assign this Agreement upon Notice to the other Party in connection with (a) any reorganization, conversion, consolidation, or merger of such Party, (b) any Change of Control, or (c) any sale, transfer or exclusive license of all or a majority of the assets of such Party that are pertinent to this Agreement or, in each case of (a) through (c) whether consummated in one transaction or a series of related transactions. For the avoidance of doubt, the assigning Party and the assignee will remain liable jointly and severally for any unperformed obligations under this Agreement or any breach hereof arising prior to the effective date of any assignment of this Agreement. This Agreement is binding on the Parties and their successors and permitted assigns.

24. Notices. Notice under this Agreement means written notification addressed to the individual signing the applicable Quotation at the address listed in the applicable Quotation, with a copy to the notified Party's legal department that is (a) delivered by hand; (b) sent by traceable nationwide parcel delivery service, overnight or next business day service; or (c) sent by certified United States mail ("**Notice**"). Properly mailed Notice will be deemed given 3 days after the date of mailing, and other Notice will be deemed made when received. A Party may change its address for Notice purposes by providing Notice of such change to the other Party.

25. Amendment; Waiver; Survival. This Agreement constitutes the entire agreement between the Parties relating to the Products and Services and supersedes all prior agreements, understandings, and representations relating to the Products and Services. Except as otherwise provided herein, no change to this Agreement will be effective or binding unless signed by Customer and a duly authorized representative of Virence. No failure by a Party to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy hereunder will constitute a waiver. If any term or provision of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such other term or provision. The following Sections of this Agreement will survive termination and continue in force: Sections 1 through 3, 4(b), 6, 8(b), 8(d) through 8(f), 9, 11, 14, 15, 16(d), 17 through 19, and 21 through 25.

26. Third Party Lease. Customer may not lease any of the Products hereunder from a third party finance company or other third party, unless Virence has approved to such lease and the Parties have entered into an appropriate consent to lease document that is signed by authorized representatives of each Party.

EXHIBIT A – BUSINESS ASSOCIATE AGREEMENT

The terms of this Business Associate Agreement are incorporated by reference into, and subject to, the Agreement. This Business Associate Agreement is only applicable to Services and/or Products performed and/or provided by Virence to the extent that Virence creates, receives, maintains, or transmits PHI from or on behalf of Customer.

Article 1. Definitions. Capitalized terms used but not defined herein have the meaning attributed to them (a) in the Agreement; or (b) under HIPAA (as defined below). In the event of a conflict, the definition under HIPAA controls.

“**HITECH Act**” means the Health Information Technology for Economic and Clinical Health Act of 2009, as may be amended from time to time.

“**Privacy Rule**” means the privacy standards in 45 C.F.R. Part 160 and Part 164, subparts A and E.

“**Security Rule**” means the Security Standards in 45 C.F.R. Part 160 and Part 164, subparts A and C.

“**Unsuccessful Security Incident**” means activities such as pings and other broadcast attacks on firewalls, port scans, unsuccessful log-on attempts, denials of service, and any combination of the foregoing, so long as no such incident results in unauthorized access, use, disclosure, modification, or destruction of Customer PHI.

Article 2. Virence’s Duties. Virence shall:

(a) not Use or Disclose Customer PHI except (i) as required or permitted by applicable law; (ii) as permitted under the terms of the Agreement or as otherwise authorized by Customer; or (iii) as incidental under HIPAA to another permitted Use or Disclosure;

(b) use reasonable and appropriate safeguards designed to prevent Use or Disclosure of Customer PHI other than as provided in the Agreement, and implement administrative, physical, and technical standards in accordance with the Security Rule designed to protect the confidentiality, integrity, and availability of Customer PHI;

(c) mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of Customer PHI by Virence that is known to Virence to violate the requirements of the Agreement;

(d) limit its request for Customer PHI to the minimum amount necessary to accomplish the intended purpose of requests for, and Uses and Disclosures of, Customer PHI in accordance with 45 C.F.R. §164.502(b);

(e) report to Customer to the extent required by HIPAA and the HITECH Act any known Use or Disclosure of Customer PHI by Virence in violation of the Agreement resulting in a Breach of Unsecured PHI. Such notification shall be made without unreasonable delay following the date of discovery to enable Customer to comply with the Breach disclosure requirements under the HITECH Act. Virence shall include within such notice identification, to the extent possible, of each Individual whose Unsecured PHI has been, or is reasonably believed by Virence to have been, accessed, used, or disclosed through the Breach and any other valuable information known to Virence that Customer is required to include in its notice to affected Individuals;

(f) report to Customer any Security Incident with respect to Customer PHI as required by HIPAA and the HITECH Act. This Article 2(f) constitutes notice by Virence to Customer of the ongoing existence, occurrence, or attempts of Unsuccessful Security Incidents, for which no additional notice to Customer is required;

(g) require any agent, including a Subcontractor, under the Agreement that creates, receives, maintains, or transmits Customer PHI on behalf of Virence to agree in writing to substantially the same restrictions and conditions with respect to Customer PHI that apply through this Business Associate Agreement to Virence with respect to such PHI;

(h) to the extent Virence maintains a Designated Record Set on behalf of Customer, at the request of Customer, provide access to Customer PHI in a Designated Record Set to Customer or, as properly directed by Customer, to an Individual, in order to meet the requirements under 45 C.F.R. §164.524;

(i) to the extent Virence maintains a Designated Record Set on behalf of Customer, at the request of Customer, make any amendment to Customer PHI in a Designated Record Set that Customer properly directs or agrees to pursuant to 45 C.F.R. §164.526;

(j) maintain and make available the information required to provide an Accounting of Disclosures to Customer (or an Individual, as

applicable) as necessary to satisfy Customer’s obligations under 45 C.F.R. §164.528;

(k) make its internal practices, books, and records relating to the Use and Disclosure of Customer PHI available to the Secretary of Health and Human Services for purposes of the Secretary’s determination of Customer’s compliance with HIPAA requirements; and

(l) to the extent that Virence agrees to carry out any Customer obligation(s) under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Customer in the performance of such obligation(s).

Article 3. Customer’s Duties. Customer shall:

(a) not request, direct, or cause Virence to Use or Disclose PHI unless such Use or Disclosure is in compliance with applicable law relating to the privacy and security of patient data and is the minimum amount necessary for the legitimate purpose of such Use or Disclosure;

(b) notify Virence of any limitation in its notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Virence’s Use or Disclosure of Customer PHI;

(c) notify Virence of any changes in, or revocation of permission by, an Individual to Use or Disclose Customer PHI, to the extent that such changes may affect Virence’s Use or Disclosure of Customer PHI; and

(d) notify Virence of any restriction on the Use or Disclosure of Customer PHI that Customer has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Virence’s Use or Disclosure of Customer PHI.

Article 4. Business Associate Permitted Purposes.

(a) Virence’s Use and Disclosure of Customer PHI is permitted for the following purposes: (i) to provide and/or perform the Products and/or Services as set forth in the Agreement (including, but not limited to, receipt from and disclosure to payers, patients, vendors, and others in order to provide and/or perform the Products and/or Services); (ii) for Payment, Health Care Operations, and Treatment (including testing and set up of electronic linkages for Payment transactions); (iii) as requested by Customer or an authorized governmental agent for the public health activities and purposes set forth at 45 C.F.R. § 164.512(b); (iv) to provide data aggregation services as permitted by 45 C.F.R. §164.504(e)(2)(i)(B); and (v) to de-identify Customer PHI in accordance with 45 C.F.R. §164.514(b), and use or disclose such de-identified information as permitted by applicable law. All de-identified information created by Virence in compliance with the Agreement will belong exclusively to Virence, provided that Customer will not hereby be prevented from itself creating and using its own de-identified information.

(b) Virence may Use Customer PHI to carry out its legal responsibilities or for its proper management and administration, including making and maintaining reasonable business records of transactions in which Virence has participated or Products and/or Services have been used (including back-up documentation).

(c) Virence may Disclose Customer PHI to carry out its legal responsibilities or for its proper management and administration; provided that (i) such disclosures are required by applicable law; or (ii) Virence obtains prior written reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by applicable law or for the purpose(s) for which it was disclosed to the person, and the person notifies Virence of any instances of which it is aware in which the confidentiality of the information has been breached in accordance with the breach notification requirements of this Business Associate Agreement.

Article 5. Business Associate Termination. Upon termination of the Agreement, to the extent feasible, Virence shall return or destroy, or, to the extent return or destruction is infeasible, continue to extend protections to and limit the use and disclosure of, Customer PHI to the extent required by and in accordance with 45 C.F.R. §164.504(e)(2)(ii)(J).

Article 6. Business Associate Default. Any material default by Virence of its obligations under Articles 2 through 4 will be deemed a default of a material provision of the Agreement, and if cure of such default and termination of the Agreement are not feasible, Customer may report the

default to the U.S. Secretary of Health and Human Services and shall provide the same information to Virence concurrently, where permitted by Applicable Law.

Article 7. Virence Business Records. Subject to the other requirements and limitations of this Business Associate Agreement, the business records of Virence and all other records, electronic or otherwise, created or maintained by Virence in performance of the Agreement will be and remain the property of Virence, even though they may reflect or contain Customer PHI.