



## Elev8 Managed Services Terms and Conditions

Ver. 001, Rev. July 19, 2019

WHEREAS Customer desires to retain Elev8 to provide certain Managed Services offered by Elev8 to outsource the support and maintenance of Customer Systems;

WHEREAS From time to time Customer may desire to utilize certain optional Professional Services and Training Services provided by Elev8 as detailed in Ordering Documents; and

WHEREAS From time to time Customer may desire to purchase certain Products from Elev8 and/or optionally utilize Elev8 to install Products into Customer Systems all as detailed in Ordering Documents.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. Definitions. The following terms used in this Agreement shall have the meanings set forth in this Section 1. Elev8 and Customer collectively shall be referred to herein as the "Parties" and each individually as a "Party." Unless specifically stated otherwise, capitalized terms used in and Ordering Documents shall have the meaning set forth in this Agreement.

"Attachments" mean the specific attachments referenced below which are hereby incorporated into the Agreement by this reference:

Attachment B: these Elev8 Standard Terms and Conditions

Attachment C: Business Associate Agreement  
"Business Hours" shall have the meaning set forth in the Managed Services Specifications.

"Deliverables" means all deliverables created by Elev8 pursuant to Ordering Documents for Professional Services. Third-Party Materials and Products are not Deliverables.

"Customer" means the legal entity designated as the customer in the Proposal.

"Customer Materials" means any component of the Customer Systems, including software, as well as any other information or materials provided by Customer to Elev8 during the Term of this Agreement.

"Customer Systems" mean Customer's information technology system and infrastructure, which may include computers, software, hardware, databases, electronic systems, and networking equipment. The specific list of components to the Customer Systems shall be documented in the Services Specifications.

"Documentation" means all documentation made available by Elev8 to Customer and any succeeding changes thereto.

Attachment B (Elev8 Managed Services Terms and Conditions)

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (Pub.L. 104-191, 110 Stat. 1936, enacted August 21, 1996), as amended.

"Managed Services Pricing" means the pricing for Managed Services set forth in the Quote.

"Managed Services Specifications" means the specifications for Managed Services set forth in Section IV (Scope of Services) of the Proposal.

"Ordering Document" means any document mutually agreed to and executed by the Parties that places an order for Products, Professional Services and/or Training Services under the terms of this Agreement. An Ordering Document may be styled as a statement of work, task order, purchase order, or other type of authorizing agreement.

"Elev8" means Elev8 Cloud Technologies, LLC.

"Products" mean any hardware, software, or other products purchased or licensed by Elev8 either for the benefit of Customer or resold to Customer for Customer's use.

"Proposal" means the proposal presented to Customer by Elev8 that describes the Services provided hereunder.

"Quote" means the pricing quotation agreed to by Customer that sets forth the Managed Services Pricing.

"Services" means (i) the Managed Services; (ii) the Training Services; and (iii) Professional Services.

"Specifications" means, as appropriate (i) the Managed Services Specifications; (ii) the specifications for the Products set forth in any applicable Ordering Documents; and (iii) the specifications for Professional Services and Deliverables provided during Elev8's provision of the Professional Services as set forth in Ordering Documents; and (iv) the specifications for Training Services set forth in the applicable Ordering Documents.

"Third-Party Materials" means any and all third-party software, hardware, content, or other products and services that are required to provide Services under this Agreement.

"Training Services" means training services provided by Elev8 and its authorized training consultants to Customer in accordance with the curriculum agreed to between the Parties and set forth in Ordering Documents. Training Services may be provided in a classroom setting, via video or audio conferences, online webinars, or other formats, all as mutually agreed to between the Parties in Ordering Documents. Training Services shall be performed at such locations and at such times as set forth in Ordering Documents.

"Users" means all Customer employees and other personnel authorized by Customer (including but not limited to Customer subcontractors) who access or otherwise utilize the Customer Systems.

2. Scope of Agreement.

2.1 Framework Agreement. This Agreement is a framework agreement that shall govern various transactions that flow from this Agreement. Customer's electronic execution and agreement to the Proposal for the Managed Services shall constitute Customer's agreement to receive the Managed Services in accordance with the terms and conditions set forth in this Agreement during the Term of the Agreement. In the event that Customer desires to

purchase Products from Elev8 and/or have Elev8 install Products within Customer Systems, then such transactions shall be documented in Ordering Documents. In the event that Customer desires to utilize optional Professional Services or Training Services provided by Elev8, then Ordering Documents shall document Professional Services and Training Services. This Agreement, absent Ordering Documents fully executed by both Parties, does not obligate Customer to purchase any Products, Professional Services or Training Services from Elev8. Each Ordering Document together with this Agreement shall each constitute an agreement between the Parties.

2.2 Terms Prevail Over Purchase Order Terms. IN THE EVENT CUSTOMER'S PURCHASE ORDER (OR OTHER COMMUNICATIONS OF ANY KIND) CONTAIN ANY ADDITIONAL TERMS OR CONFLICT WITH ANY TERMS AND CONDITIONS CONTAINED HEREIN, THIS AGREEMENT SHALL GOVERN. CUSTOMER'S PURCHASE ORDER IS EXPRESSLY CONDITIONED UPON CUSTOMER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS IN LIEU OF ANY STANDARD TERMS AND CONDITIONS ATTACHED TO A PURCHASE ORDER. Elev8's failure to object to provisions contained in any communication from Customer shall not be deemed a waiver of this provision. An inadvertent omission or reference to this Agreement in a Ordering Document shall not affect the application of this Agreement to such Ordering Document.

3. Term and Renewal. This Agreement shall commence as of the Effective Date, and unless earlier terminated as provided herein, shall continue for the Initial Term specified on the Cover Page. Unless terminated in accordance with the termination provisions of this Agreement as provided herein, the Agreement shall automatically renew for successive one (1) year terms unless either Party provides advance written notice of its intention not to renew this Agreement at least sixty (60) days prior to the end of the Initial Term or any subsequent Term. The Initial Term and any and all renewal terms shall collectively be referred to as the "Term".

4. Managed Services

4.1 Elev8's Appointment as Service Provider. Customer hereby appoints Elev8, and Elev8 hereby accepts appointment, as Customer's agent solely for purposes of implementing this Agreement including the performance of certain analytical, consulting, support services over Customer Systems all as set forth in this Agreement and in the Managed Services Specifications (the "Managed Services").

4.2 Performance of the Managed Services. In consideration for Customer's ongoing payment of the monthly charges for the Managed Services, Elev8 shall provide the Managed Services to Customer during Business Hours. Elev8 shall not be required to provide labor, materials, equipment, appliances, supervision or services of any kind unless specifically included in the Managed Services Specifications. Unless otherwise set forth in the Managed Services Specifications, the Parties agree that the Managed Services will be rendered principally, but not exclusively, at Customer's location(s). In providing the Managed Services, it is agreed that Customer and/or others may supply Elev8 with certain information and/or data, and that Elev8 will rely on such information. It is agreed that the accuracy of such information is not within Elev8's

control and Elev8 shall not be liable for its accuracy, nor for its verification.

4.3 Changes to the Managed Services. Either Party may, at any time during the Term, request in writing changes to the Managed Services. The Parties shall evaluate such proposals and, if required and agreed, implement all such agreed upon changes by amending the Managed Services Specifications and/or the Managed Services Pricing. No changes will be effective unless and until memorialized in a written amendment signed by both Parties.

4.4 Removal of Elev8 Employees from Services. Elev8 shall provide personnel with suitable training and skills to perform the Services. In the event that Customer advises Elev8 in writing, that, in good faith, it does not approve of the conduct of Elev8's employees performing the Services for Customer, Elev8 shall within a reasonable time thereafter: (a) correct the conduct of said employees; or (b) remove the employees and replace them with a suitable replacement.

4.5 Customer Materials License. Customer hereby grants to Elev8 a fully paid-up and royalty-free, non-exclusive right and license to use, reproduce, perform, display, distribute, modify and create derivative works and improvements of the Customer Materials solely to perform the Services or to further develop and improve the Customer Materials as necessary or desirable to perform the Services. This license commences upon Customer's first delivery of Customer Materials to Elev8 and continues in effect until the termination or expiration of this Agreement.

4.6 Out of Scope Services. Projects and other services that fall outside of the scope of the Specifications shall not be provided by Elev8 unless, at the request of Customer, are scoped and priced separately under a separate Ordering Document for Professional Services.

## 5. Professional Services

5.1 Professional Services. During the Term of this Agreement and upon the request of the Customer, Elev8 or its authorized agents may provide certain Professional Services to Customer from time to time as set forth in Ordering Documents ("Professional Services"). As part of the Professional Services, Elev8 may develop Deliverables in accordance with the terms of each Ordering Document. Notwithstanding anything herein to the contrary, such Professional Services shall be performed by individuals as employees or agents of Elev8, an independent contractor, and not as employees of Customer. Unless otherwise specified in an Ordering Document or other document signed by Elev8 and Customer: (a) Elev8 (or its licensors) shall retain all Intellectual Property Rights to the Deliverables, including, without limitation, all information, ideas, concepts, software, source and object code provided during, or resulting from, the provision of the Professional Services except for any pre-existing Intellectual Property Rights of the Customer; and (b) all Deliverables created under this Agreement shall not be considered "works made for hire."

## 6. Sales and Installation of Products

6.1 Orders for Products. If specified in an Ordering Document, Customer will purchase or license Products for Customer and/or install Products in Customer Systems. All installation instructions shall be as set forth in the Ordering Document. To the extent any

term or instruction relating to installation in the Ordering Document conflicts with this Agreement, the Ordering Document will govern.

6.2 Lead Times. The lead time for shipment and installation of Products shall be negotiated on an order-by-order basis and set forth in Order Documents.

6.3 Cancelling Orders for Products. Orders for Products may not be cancelled or modified after Elev8 has placed an order for such Products with its suppliers if the supplier is not able or willing to cancel Elev8's order. Customer is not authorized, nor will Elev8 accept, any returns of the Products that are not in compliance with this provision.

6.4 Shipment, Risk of Loss, and Title to Products. If the Products are to be shipped to Customer, then Customer shall pay all freight and insurance costs from the point of shipment to Customer's designated delivery point. Risk of loss to the Products shall pass to Customer upon Elev8's delivery of the Products to the shipping carrier; or if such Products are delivered in person to Customer by Elev8, then upon delivery to Customer. Title to all Products (excluding any Products that are licensed to Customer) shall pass to Customer upon complete payment for such Products. Customer hereby grants to Elev8 a purchase money security interest in all Products sold by Elev8 to Customer pursuant to this Agreement until Elev8 has paid in full for such Products.

6.5 Products Not for Resale. Unless the Parties otherwise agree in writing, Customer's purchase of the Products indicated in Ordering Documents shall be for Customer's own internal use and not for resale to third parties.

7. Project Management. Each Party shall, throughout the Term, maintain within its organization a project manager to serve as such Party's primary point of contact for day-to-day communications, consultation, and decision-making regarding the Services or Products ("Project Manager"). Each such project manager shall be responsible for providing all day-to-day consents and approvals on behalf of such Party under this Agreement. Each Party shall ensure its project manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. The Parties' initial project managers shall be set forth in the Specifications. Each Party shall use commercially reasonable efforts to maintain the same project manager in place throughout the Term. If either Party's Project Manager ceases to be employed by such Party or such Party otherwise wishes to replace its Project Manager, such Party shall promptly name a new Project Manager by written notice to the other Party.

## 8. Customer Obligations

8.1 Customer Resources and Cooperation. Customer shall timely provide such cooperation and assistance as Elev8 reasonably requests to enable Elev8 to perform the Services in accordance with the Specifications, including any applicable performance dates set forth therein. Without limitation of the foregoing, Customer shall timely:

a) perform all obligations identified as Customer responsibilities in the Specifications, including but not limited to the Customer Prerequisites and Assumptions section of the Managed Services Specifications;

b) provide the Customer Materials and all such other resources identified in the Specifications;

c) provide Elev8 personnel with access to Customer's premises as reasonably scheduled, which premises shall be maintained by Customer in a safe and clean work environment in which Elev8's personnel may conduct the Services;

d) provide Elev8 with access, as reasonably scheduled, to suitably qualified personnel reasonably familiar with the Customer Systems. If Services will be performed outside of normal working hours, Customer personnel shall be available to facilitate the required access;

e) keep Elev8 apprised of business, organizational and technical issues that may have impact on the performance and delivery of any Services;

f) notify Elev8 upon learning of any significant problem with the performance of the Customer Systems or any other work that is required to be performed under this Agreement;

g) obtain before the date on which the Services are scheduled to start, and maintain during the Term, all necessary licenses and consents and comply with all applicable laws in relation to the Services, the installation of any Products, and the use of Customer Materials and Third-Party Materials;

h) participate through suitably qualified and authorized Customer personnel in (i) all meetings scheduled in or in accordance with the Specifications and (ii) such other meetings as may be scheduled by either Party on at least five (5) days' prior written notice;

i) provide all consents, approvals, notices and other communications as required under this Agreement and, where applicable, the Specifications in a timely fashion so as not to delay Elev8's performance of the Services; and

j) performing the day-to-day tasks associated with creating archival or backup copies of data stored within the Customer Systems.

8.2 Third-Party Materials. Customer Systems may include or operate in conjunction with Third-Party Materials. Unless indicated otherwise in the Specifications, the cost of acquiring, licensing, and maintaining any Third-Party Materials shall be the responsibility of Customer. Third-Party Materials that are recommended by Elev8, or required by Elev8, in order to perform the Services shall be specifically detailed in the Specifications or in an applicable Ordering Document. In the event that Customer declines Elev8's recommendation, Elev8 shall not be liable or responsible for providing any Services connected with such unlicensed or unpurchased software and/or hardware. Customer shall comply with all such third-party license agreements that may be required for Third-Party Materials and Customer shall ensure that Elev8 is an authorized user of any Third-Party Materials, at Customer's cost. Any violation of any third-party license agreements shall constitute a material breach of this Agreement.

8.3 Custodian of Records. At all times during the Term and for all regulatory and legal purposes, Customer shall be the custodian of all of its records.

9. Training. If so specified in an Ordering Document, Elev8 shall provide Customer Training Services at a location to be mutually agreed upon or via an Internet-based webinar. Customer may use material provided to conduct courses ("Training Materials") to Users provided that Elev8's copyright notices are

retained thereon. Training Materials shall be considered Elev8 Confidential Information.

## 10. Change Orders

10.1 Negotiating Change Orders. If either Party wishes to change the scope or performance of the any Services, it shall submit details of the requested change to the other in writing. Elev8 shall, within a reasonable time after receipt of such request, provide a written estimate to Customer of:

- a) the likely time required to implement the change;
- b) any necessary variations to the fees and other charges for the Services arising from the change; and
- c) any other impact the change might have on the performance of the applicable the Services.

10.2 Executing Change Orders. Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing.

## 11. Prices

11.1 Managed Services Prices. In consideration for Elev8's provision of the Managed Services, Customer shall pay the Managed Services Pricing for such Managed Services during the Term of this Agreement. Customer acknowledges and agrees that Elev8 has agreed to the Managed Services Pricing and Managed Services Specifications predicated upon receiving payment for the Managed Services for the entirety of the Term and that the Customer would not receive the benefit of the Managed Services Pricing and Managed Services Specifications unless Customer agreed to complete the Term.

11.2 Product Prices. In consideration for Elev8's purchase of the Products, if any, set forth in the applicable Ordering Document, Customer shall pay the prices for such Products set forth in the applicable Ordering Document (the "Product Prices").

11.3 Professional Services Fees. In consideration for Elev8's provision of the Professional Services, Customer shall pay the fees set forth in the applicable Ordering Document (the "Fees").

11.3.1 Time and Materials. Where the Professional Services are provided on a time and materials basis, the Fees payable for the Professional Services shall be calculated on a daily or hourly basis in accordance with Elev8's rates set forth in the applicable Ordering Document.

11.3.2 Fixed Fees. Where Professional Services are provided for a fixed price, the total Fees for the Professional Services shall be the amount set out in the Ordering Document. The total Fee may be paid to Elev8 in installments, if so specified in the Ordering Document.

11.4 Training Fees. In consideration for Elev8's provision of Training Services, Customer shall pay the training Fees set forth in the applicable Ordering Document.

11.5 Travel Expenses. Unless otherwise specified in Ordering Documents, Customer shall reimburse Elev8 for reasonable and ordinary travel expenses actually incurred by Elev8 while traveling for the benefit Customer in connection with work related to the Services, including transportation costs, hotel accommodations and meals (the "Travel Expenses"), provided, however, that Elev8 shall not be reimbursed

for travel to any Customer location(s) unless expressly set forth in Ordering Documents. Whenever practicable, Elev8 shall seek pre-approval from Customer on an anticipated Travel Expenses prior to traveling on Customer's behalf.

11.6 Price Changes. The Managed Services Pricing is subject to change once annually by providing Customer with revised Managed Services Pricing which shall become effective sixty (60) days after delivery unless Customer has provided written notice to Elev8 of its intention to terminate this Agreement based on the change in the Managed Services Pricing.

11.7 Taxes. The Managed Services Pricing, Product Prices, Fees for Professional Services, and Fees for Training Services do not include duties, sales, use, excise or similar fees or taxes applicable to the sale or licensing of the Services or Products (collectively "Taxes"). Customer will be responsible to pay all such Taxes or reimburse Elev8 for Taxes except any tax assessed upon Elev8's net income. Customer shall not reduce any fees or charges owed to Elev8 as a result of any such Taxes.

## 12. Invoicing, Payment and Billing

12.1 Invoicing to Customer. Unless the Parties have agreed otherwise in an Ordering Document, Elev8 shall invoice Customer electronically via emails to Customer's designated billing email address as follows (collectively, the "Charges"):

- a) Elev8 shall invoice Customer for the Managed Services in accordance with the Managed Services Pricing. The invoice for Managed Services shall be issued in advance of performance of the Managed Service (e.g., the invoice for April's Managed Services shall be invoiced at the beginning of March). Actual invoice amount will be adjusted quarterly based on User count on the last business day of the calendar quarter.
- b) Elev8 shall invoice Customer in arrears for all Professional Services Fees to be billed on a time and materials basis and performed during the prior calendar month.
- c) Elev8 shall invoice Customer upon receipt of an Ordering Document for all Professional Services to be billed on a fixed price basis.
- d) Elev8 shall invoice Customer upon receipt of an Ordering Document for Training Services.
- e) Elev8 shall invoice Customer for Products upon receipt of an Ordering Document for such Products.

12.2 Payment Method. Unless otherwise agreed to in writing between the Parties, Elev8 shall automatically debit (charge) Customer's designated credit card or bank account via ACH thirty (30) days after the date of Customer's receipt of the invoice for Charges (the "Due Date"). Promptly upon execution of this Agreement, Customer agrees to complete the credit card or ACH payment profile located on Elev8's secure payment portal at <http://payments.PeakeTechnology.com>. Customer hereby authorizes Elev8 to either (a) automatically bill the credit card Customer provided or (b) automatically debit (charge) Customer's bank account electronically via ACH. "ACH" means the automated clearing house which is the nationwide network of banking institutions that process electronic payments automatically between bank accounts. Customer agrees that Elev8 may receive updated information about Customer's account from the financial institution issuing Customer's credit card.

12.3 Payment Terms. Any payment not made by Customer by the Due Date or rejected by the credit card company or bank will be subject to interest starting on the tenth (10th) business day following the Due Date through the date paid, at a rate of one and one-half (1.5%) percent per month, or the maximum rate allowable at law, if less. No discounts for early payment are authorized.

12.4 Disputed Invoices. If Customer disputes any part of any invoice, Customer must provide Elev8 with written notice of the dispute containing a detailed description of the request for each specific item disputed within five (5) days prior to the Due Date (a "Disputed Item"). If Customer fails to provide Elev8 with such written notice of the dispute within such timeframe, then Elev8 shall not be obligated to investigate or revise the invoice.

12.5 Failure to Pay. Failure to pay any Charges or other amounts due (including Taxes), less Disputed Items, to Elev8 on or before the Due Date and after written notification by Elev8 shall be a breach of this Agreement ("Failure to Pay"). Notwithstanding anything else contained in this Agreement, in the event that a Failure to Pay is not cured within ten (10) business days, Elev8 may suspend its provision of the Services and/or terminate this Agreement for default. Any suspension may be continued until the Failure to Pay has been cured. Elev8 shall be entitled to recover reasonable attorney's fees, arbitration costs, and other costs incurred by Elev8 in collecting all unpaid amounts hereunder following a Failure to Pay.

12.6 No Setoffs or Accord and Satisfaction. Customer is solely responsible for the payment of all Charges and other amounts as set forth in this Agreement. Customer shall not set off or withhold any amount from Elev8, except for Disputed Items. Customer shall not place any condition or restrictive legend, such as "Paid in Full", on any check or instrument used to make a payment. The Parties agree that the negotiation of any such check or instrument so inscribed shall not constitute an accord and satisfaction or novation, and Customer waives its right to assert any such defense.

## 13. Intellectual Property Rights

13.1 Elev8 Intellectual Property Rights. Customer acknowledges and agrees that the intellectual property rights underlying Elev8 Confidential Information, Documentation, the Managed Services, Elev8 Materials, and Deliverables (collectively, "Elev8 IP") are owned by, and shall remain the sole property of Elev8 and its licensors, that the Elev8 IP contains, embodies and is based upon worldwide patented or patentable inventions, trade secrets, copyrights and other intellectual property rights (collectively, "Intellectual Property Rights") owned or licensed by Elev8 and its licensors, and that Elev8 and its licensors shall continue to be the sole owner of all Intellectual Property Rights in and to the Elev8 IP worldwide including, without limitation, any derivative works. This Agreement does not convey to Customer title or ownership of the Intellectual Property Rights underlying the Elev8 IP, but only a right of limited use in accordance with this Agreement. Customer acknowledges that the Elev8 IP provided by Elev8 pursuant to this Agreement is entitled to protection under applicable copyright and other intellectual property laws and constitute valuable assets, trade secrets and proprietary rights of Elev8 or its licensors.

13.2 Customer Intellectual Property Rights. Elev8 acknowledges and agrees that the Intellectual Property Rights underlying any Customer Materials provided by Customer to Elev8 hereunder ("Customer IP") are owned by, and shall remain the sole property of Customer and its licensors, that the Customer IP contains, embodies and is based upon worldwide Intellectual Property Rights owned or licensed by Customer and its licensors, and that Customer and its licensors shall continue to be the sole owner of all Intellectual Property Rights in and to the Customer IP worldwide including, without limitation, any derivative works. This Agreement does not convey to Elev8 title or ownership of the Intellectual Property Rights underlying the Customer IP, but only a right of limited use in accordance with this Agreement. Elev8 acknowledges that the Customer IP provided by Customer pursuant to this Agreement is entitled to protection under applicable copyright and other intellectual property laws and constitute valuable assets, trade secrets and proprietary rights of Customer or its licensors.

13.3 Third-Party Materials. All right, title and interest in and to the Third-Party Materials, including all Intellectual Property Rights therein, are and will remain with their respective third-party rights holders subject to the terms and conditions of the applicable third-party license agreements. Customer has no right or license with respect to any Third-Party Materials except as expressly licensed under such third-party license agreements.

13.4 Suggestions. Many of Elev8's changes to aspects of the Services come as a result of suggestions made by customers and partners, whether in the form of suggestions, enhancement requests, recommendations, or other feedback, with regard to the Services (all of the foregoing, collectively, "Suggestions"). All customers benefit from Elev8 incorporating Suggestions in the Services. Customer grants to Elev8 an irrevocable, worldwide, royalty-free, perpetual license to use as Elev8 deems appropriate any Suggestions that Customer, or any person or entity under the direction or control of Customer, provides to Elev8, to incorporate such Suggestions in any form into the Services (or any other products or services), and to exercise any other rights with respect to such Suggestions. Elev8 shall be entitled to use any Suggestions without restriction and without obligation to Customer or any third party.

#### 14. Confidentiality.

##### 14.1 Confidential Information.

14.1.1 "Confidential Information" means all such information, material and data received by one Party (the "Receiving Party") from the other Party (the "Disclosing Party") or its patients, customers, or clients, whether disclosed in writing or verbally, (i) that is labeled or designated in writing as confidential or proprietary, (ii) which Receiving Party is advised is proprietary or confidential or (iii) which, in view of the nature of such information or the circumstances of its disclosure, Receiving Party knows or reasonably should know is confidential or proprietary. Confidential Information includes the terms and conditions of this Agreement. Confidential Information shall not include information which (a) is or becomes publicly available through no act or omission of the Receiving Party; (b) is rightfully received from a third party without an obligation of

confidence; (c) is independently developed by the Receiving Party without reference to Confidential Information; or (d) is required to be disclosed in accordance with a judicial or governmental order or decree, provided that the Receiving Party provides prompt notice of the order or decree to the Disclosing Party and reasonably cooperates with the Disclosing Party to limit the disclosure and use of the Confidential Information.

14.1.2 Use of Confidential Information. The Receiving Party will hold any Confidential Information in strict confidence for a period of three (3) years from termination of this Agreement, except that the obligation of the Receiving Party to maintain the confidentiality of trade secrets and personally identifiable data shall survive indefinitely. The Receiving Party will use such Confidential Information only in accordance with the terms of this Agreement. The Receiving Party shall limit the use of, and access to, the Confidential Information to its employees or agents whose use of or access to the Confidential Information is necessary to carry out the intent of this Agreement. The Receiving Party shall, by appropriate means, prevent the unauthorized disclosure, publication, display or use of any Confidential Information. Without limiting the generality of the foregoing, the Receiving Party shall require all employees, agents or contractors who shall have access to the Confidential Information to execute, prior to such access, a non-disclosure agreement providing for at least the same protection of the Confidential Information as is provided for by this section.

14.1.3 Destruction or Return of Confidential Information. Upon expiration or termination of this Agreement for any reason, the Receiving Party shall promptly return to the Disclosing Party, or, if requested, destroy all copies of the Disclosing Party's Confidential Information in its possession. All copies, notes or other derivative material relating to the Confidential Information shall be promptly retrieved or destroyed, as agreed, and no such material shall be retained or used by the Receiving Party in any form or for any reason.

14.2 Business Associate Agreement. Elev8 may have access to Protected Health Information ("PHI") as defined by HIPAA and that (ii) such access renders Elev8 a business associate as that term is defined by HIPAA. Accordingly, the Parties will enter into a business associate agreement in a form substantially similar to the one set forth in Attachment C to the Proposal (the "Business Associate Agreement").

15. Access to Customer Systems. Elev8 shall limit access and use of Customer Systems solely to provide the Services and shall not access or attempt to access the Customer Systems or any other equipment, computers, software, networks, electronic files, or electronic data storage systems, other than those specifically required to provide the Services. Customer shall limit such access to those individuals with a requirement to have such access in connection with this Agreement and shall strictly follow all Customer security rules and procedures provided in advance to Elev8 in writing. All user identification numbers and passwords disclosed to Elev8 by Customer and any Customer nonpublic information obtained by Elev8 as a result of its access to and use of Customer Systems shall be deemed to be Confidential Information. Each Party agrees to cooperate with the other Party in the investigation of

any apparent unauthorized access to the Customer Systems or any other equipment, computer, software, network, clean-room, electronic file, or electronic data storage systems owned or controlled by the other Party, or any apparent unauthorized release of nonpublic information by a Party's employees.

#### 16. Warranties

16.1 Mutual Warranties. Each Party represents and warrants that it has the full corporate or organizational power to enter into and perform this Agreement, and that the execution and performance hereof has been duly authorized by all necessary corporate or other organizational action.

16.2 Customer Warranties. Customer warrants and represents to Elev8 that Customer: (a) owns all right, title and interest in the Customer System; and (b) at all times during the Term, Customer shall comply with licensing and use agreements for Customer Materials and Third-Party Materials.

16.3 Managed Services Warranty. Elev8 warrants that the Managed Services will: (a) be performed in a workmanlike manner consistent with applicable industry standards normally practiced by recognized firms in performing services of a similar nature; and (b) materially conform to the Specifications during the Term of the Agreement. Customer's sole remedy for any claims under this Section 16.3 shall be to correct such failures at no charge to Customer.

16.4 Professional Services Warranty. Elev8 warrants that (a) the Professional Services will be performed in a workmanlike manner consistent with applicable industry standards normally practiced by recognized firms in performing services of a similar nature; and (b) the Deliverables delivered to Customer are warranted to materially conform to the Specifications for a period of Ninety (90) days after completion of the Professional Services (the "Professional Services Warranty Period"). Customer must notify Elev8 in writing of any Professional Services warranty deficiencies during the Professional Services Warranty Period. Customer's sole remedy for any claims under this Section 16.4 shall be to correct such failures at no charge to Customer.

16.5 Training Services Warranty. Elev8 warrants that the Training Services will be performed: (a) in material accordance with the Specifications for such Training Services; and (b) to the best of its ability and in a good, workmanlike manner with the highest standards of care, skill, and diligence used by persons who are skilled, trained and experienced with respect to the type of Training Services being provided. Customer must notify Elev8 in writing of any Training Services warranty deficiencies within Ten (10) days following completion of the Training Services. Customer's sole remedy for any claims under this Section 16.5 shall be to either correct such failures at no charge to Customer or refund the payment for the deficient portion of the Training Services, at Elev8's sole discretion.

##### 16.6 Products Warranty.

16.6.1 Pass Through Warranty Offered by Manufacturers. Elev8 is not the manufacturer of the Products. To the extent that the manufacturer of the Products offers a warranty for the Product, Elev8 shall provide to Customer a pass through of Products warranties provided by the Products manufacturers. Elev8 may, from time-to-time, make extended warranties offered by manufacturers available to

Customer. If an extended warranty is offered to Customer and Customer is willing to enter into the extended warranty and pays for same then the price for the extended warranty shall be reflected on applicable Ordering Document and the terms and conditions of the extended warranty shall be included in the Ordering Document. Customer shall address all warranty issues directly through Elev8.

16.6.2 No Product Warranty From Elev8. Elev8 makes no additional warranties with respect to the Products. Excluding any manufacturer's warranty that might be provided, Elev8 disclaims all warranties with respect to the Products and Elev8 provides the Products under this Agreement on an "AS IS" basis and "with all faults."

16.6.3 RMA Process. Prior to returning any Products to Elev8 for repairs or replacement, Customer must obtain a Return Merchandise Authorization ("RMA") from Elev8. Products shipped to Elev8 without a RMA will be returned to Customer at Customer's expense. Customer agrees to pay all shipping and freight charges, FOB Elev8 offices, for all Products sent to Elev8. After repairing or replacing the Products, Elev8 shall pay all shipping and freight charges, FOB Elev8 offices, to return the Products back to Customer unless (i) Customer has sent Products to Elev8 that is out of warranty; or (ii) the Products sent to Elev8 is in working condition and not in need of repair or replacement; or (iii) the Products were sent to Elev8 without a RMA issued by Elev8. Under the preceding conditions, Customer agrees to pay or reimburse Elev8 for all shipping and freight charges. Customer acknowledges that it is solely responsible for backing-up and safeguarding any data stored on the Products at all times including before shipment to Elev8, its designee or the manufacturer. If Customer ships any Products to Elev8 or its designee, Elev8 is only responsible for any loss or damage that occurs (a) while at the site of Elev8 or its designee and (b) where the loss or damage is caused by the negligence or willful misconduct of Elev8 or its designee. In that case, Customer's only remedy and Elev8's sole liability to Customer shall be to repair or replace the lost or damaged Products.

16.7 No Warranty for Third-Party Materials. As all Third-Party Materials are purchased or licensed directly by Customer, Elev8 provides no warranty with respect to any Third-Party Materials, either express or implied, and Customer shall look directly to the manufacturer, licensor, or supplier of such Third-Party Materials for all warranty issues stemming from Third-Party Materials. For avoidance of doubt, warranty issues related to any Products purchased or licensed from Elev8 shall be governed by Section 16.6 (Products Warranty), and not this Section.

16.8 WARRANTY DISCLAIMER. THE FOREGOING WARRANTIES ARE IN LIEU OF, AND THE PARTIES EXPRESSLY DISCLAIM, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

16.9 Sole Remedy. Customer's sole remedy and Elev8's sole obligation for any warranty claims under

this Section 16 shall be to correct such failures at no charge to Customer.

## 17. Indemnification.

17.1 Indemnification by Customer. Customer (the "Indemnifying Party") shall defend, indemnify and hold harmless Elev8, and each of its officers, directors, owners, employees, agents or licensors (each, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against all third party actions, suits, losses, liabilities, claims, expenses, damages, and costs of every kind and description including reasonable legal fees (collectively, "Losses") arising out of or in connection with (i) use or support of Customer Systems (except to the extent that the Loss is caused by Elev8's breach of this Agreement); (ii) any personal injury (including death) or loss or damage to tangible property (other than data or information) to the extent such injury or damage is the result of negligence or wrongful misconduct of Customer or its employees; (iii) Customer's breach of Section 8.2 (Third-Party Materials) or Section 16.2 (Customer Warranties) of this Agreement; (iv) any Losses stemming from an employee or other User of Customer (unless such Loss stems from Elev8's breach of this Agreement); or (v) agreements between Customer and its patients, clients, or customers (unless such Loss stems from Elev8's breach of this Agreement).

17.2 Indemnification by Elev8. Elev8 (the "Indemnifying Party") shall defend, indemnify and hold harmless Customer and its officers and directors, owners, employees or agents (each, an "Indemnified Party" and, collectively, the "Indemnified Parties") from and against all third party Losses arising out of or in connection with any specific third-party claim, suit, or allegation that (i) Elev8 has breached any of the confidentiality provisions of this Agreement (including the Business Associate Agreement); or (ii) any personal injury (including death) or loss or damage to tangible property (other than data or information) to the extent such injury or damage is the result of negligence or wrongful misconduct of Customer or its employees; or (iii) any gross negligence or intentional actions of Elev8 or its employees.

17.3 Indemnity Procedure. The Indemnified Party shall provide the Indemnifying Party with (i) prompt written notice of any claims under this Section 17 for which it seeks indemnification hereunder; (ii) full information and assistance in settling and/or defending the claims; and (iii) full authority and control of the defense and/or settlement of any such claims.

17.4 Exclusive Remedy for Indemnification and Survival. The remedies set forth in this Section 17 (Indemnification) shall be the exclusive remedies of the Parties with reference to any claims for indemnification. The indemnification obligations set forth in this Agreement shall survive any termination or expiration of the Agreement.

## 18. Limitation of Liability.

18.1 LIMITATION ON INDIRECT DAMAGES. NEITHER OF THE PARTIES NOR THEIR LICENSORS SHALL BE LIABLE TO THE OTHER FOR INDIRECT, PUNITIVE, CONSEQUENTIAL, ECONOMIC, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF BUSINESS REVENUE OR EARNINGS, LOST DATA, DAMAGES CAUSED BY DELAYS, OR A FAILURE TO REALIZE EXPECTED SAVINGS) DIRECTLY OR INDIRECTLY ARISING

OUT OF OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD HAS BEEN DISCLOSED TO EITHER PARTY OR THEIR LICENSORS.

18.2 LIMITATION ON DIRECT DAMAGES. EXCEPT AS OTHERWISE SET FORTH IN AND SUBJECT TO ANY BUSINESS ASSOCIATE AGREEMENT, BOTH PARTIES SHALL BE LIABLE TO THE OTHER FOR DIRECT DAMAGES ONLY, IN AN AMOUNT NOT TO EXCEED, IN THE AGGREGATE FOR ALL CLAIMS, THE TOTAL AMOUNT OF REVENUE GENERATED UNDER THIS AGREEMENT IN THE MOST RECENT TWELVE (12) MONTH PERIOD FROM WHEN THE CLAIM AROSE.

18.3 Force Majeure. Neither Party shall be liable to the other Party or shall be subject to termination of the Agreement by the other Party for any delay, nonperformance, loss or damage (other than for failure to pay any amount when due) because of reasons beyond its reasonable control including, but not limited to, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving its employees), communication systems failures, internet service provider failures or delays, or denial of service attacks, war, riots, power failures, accidents in transportation or other causes beyond the reasonable control of the respective Party ("Force Majeure").

18.4 Effect of Customer Failure or Delay. Elev8 is not responsible or liable for any late delivery or delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement. In the event of any such delay or failure, Elev8 may, in its sole discretion and by written notice to Customer, extend all such performance dates by the same number business days as was caused by the delay and, where applicable, amend the Specifications to reflect such extensions. The foregoing is in addition to, and not in lieu of, all other remedies Elev8 may have for any such failure or delay by Customer.

18.5 Survival of Limitations. This Section 18 shall survive any termination or expiration of the Agreement.

## 19. Insurance.

19.1 Coverage and Limits. At all times during the Term of this Agreement (and for a period of three years thereafter with respect to policies issued on a claims-made basis), Elev8 shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

- a) Commercial General Liability with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including bodily injury and property damage;
- b) Worker's Compensation with limits no less than the minimum amount required by applicable law;
- c) Employer's Liability with limits no less than \$500,000 for bodily injury by accident or disease;
- d) Commercial Automobile Liability with limits no less than \$500,000, combined single limit; and
- e) Errors and Omissions/Professional Liability with limits no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate.

19.2 Requirements. All insurance policies required pursuant to this Section 19 shall waive any right of subrogation of the insurers against Customer. Upon



the written request of Customer, Elev8 shall provide Customer with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this Section 19. Neither Party shall take any actions to invalidate such insurance.

## 20. Termination.

20.1 Termination By Either Party. A non-breaching Party may terminate this Agreement for cause by written notice to breaching Party upon the occurrence of any of the following events: (i) the material breach by breaching Party of any term, provision, representation or warranty of this Agreement that remains uncured thirty (30) days after the non-breaching Party provides written notice thereof; (ii) a material breach of any of its intellectual property, confidentiality obligations; or (iii) a Party becomes insolvent or subject to any proceeding under the federal bankruptcy laws or other similar laws for the protection of creditors, and such event continues for ninety (90) days after the non-breaching Party provides written notice thereof.

20.2 Elev8 Termination. Elev8 may terminate this Agreement for cause by written notice to Customer upon Customer's failure to pay any amounts due to Elev8 within fifteen (15) days following a Failure to Pay.

20.3 Rights Upon Termination. Upon termination of this Agreement by either Party:

- a) Each Party will promptly cease using and destroy or return to the other Party all items that contain any Confidential Information of the other Party;
- b) All licenses conferred under this Agreement shall terminate;
- c) Elev8 shall immediately invoice Customer for any outstanding sums which may be owing and Customer immediately shall pay such invoices; and
- d) termination or expiration of this Agreement shall not release either Party from: (i) any liability which has already accrued to the other Party hereto at the time of termination or expiration; (ii) any liability which thereafter may accrue with respect to any act or omission prior to termination or expiration; or (iii) any obligation which is expressly stated herein to survive termination or expiration.

20.4 Transition Services. As soon as practicable after a notice of termination has been given or, in the absence of such notice, not later than thirty (30) days prior to the end of the Term, the Parties may elect to meet to prepare and agree upon Professional Services to be provided by Elev8 in connection with the termination of the Managed Services (the "Transition Services"). Termination Services shall be agreed upon in an Ordering Document. Elev8 shall use commercially reasonable efforts to assist Customer in completing the Transition Services, in a manner consistent with then-current industry best practices, so as to assist Customer or another service provider chosen by Customer. Notwithstanding any term or provision to the contrary stated in this Agreement, Customer shall not be required to perform any additional Services or Transition Services until it is paid for all Services previously performed by Elev8 and Products sold to Customer and payment in advance for said Transition Services (notwithstanding any other payment or invoicing terms set forth in this Agreement). Notwithstanding any termination of this Agreement, prior to the end of the Transition Services period, all the terms and conditions of this Agreement

shall survive until all Transition Services have been completed and paid for notwithstanding any provision in this Agreement to the contrary. Under no circumstances shall Elev8 be required to provide any Elev8 Confidential Information to Customer, its successor service provider, or any third party as part of the Transition Services and Customer is expressly prohibited from disclosing any Elev8 Confidential Information to its successor service provider.

## 21. General Provisions

21.1 Arbitration. Any dispute, controversy, or claim arising out of, relating to, or having any connection with the Agreement will be exclusively and finally settled by arbitration conducted by one arbitrator, as mutually determined by the Parties, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, conducted in the English language and located in Maryland. Judgment on the award rendered by the arbitrator shall be entered in any court having jurisdiction thereof.

21.2 Publicity. Neither Party shall issue a press release or make any similar public announcement without the other Party's prior written consent to the specific language and intended distribution of such press release or announcement. Notwithstanding the foregoing, the Parties agree to issue a joint press release so that both Parties can make reference to this in marketing and promotional material. Elev8 may use Customer's name and logo in Elev8's customer lists which may be posted on Elev8's website.

21.3 Assignment. This Agreement and the rights and obligations hereunder may not be assigned, delegated, sublicensed or transferred without the prior written consent of the other Party. Notwithstanding the foregoing, either Party shall be free to assign its rights and obligations hereunder (in whole or in part) to a successor or affiliate at any time or to a third party in connection with a sale by such Party of a part of its business to that third party provided that the assignee: (a) agrees to be bound by the terms and conditions of this Agreement and (b) is not a competitor of the other Party.

21.4 Subcontractors Permitted. Elev8 may engage subcontractors to perform all or any portion of its duties under this Agreement provided that any such subcontractor agrees in writing to be bound by confidentiality obligations at least as protective as the terms of this Agreement regarding confidentiality, and provided further that Elev8 remains responsible for the performance of such subcontractors.

21.5 Amendments. No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the Parties hereto unless made in writing and duly signed by the Parties, provided, however, Elev8 may amend the Managed Services Pricing pursuant to Section 11.6 (Price Changes).

21.6 Compliance with Laws. Each Party agrees to abide by all local, state, national, and international laws and regulations applicable to such Party's performance under this Agreement, including, without limitation, all intellectual property and privacy laws.

21.7 Non-Solicitation. No member of either Party's personnel shall during the Term of this Agreement and for one year thereafter, without the prior written consent of the other Party, solicit the employment of any employee, former employee (separated less than

6 months), or consultant or subcontractor of the other Party or hire any employee, former employee, or consultant or subcontractor of the other Party who has been involved in the negotiation, operation or performance under this Agreement or any amendment or extension thereof.

21.8 Attorneys' Fees. In the event that either Party breaches the terms of this Agreement and arbitration or suit is brought for any breach and/or enforcement thereof, then the arbitrator or court shall award the prevailing Party reasonable attorney's fees and related costs.

21.9 Miscellaneous Provisions. A failure or delay of either Party to this Agreement to enforce any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions. In the event that any provision of this Agreement shall be held to be invalid, the remaining provisions of this Agreement shall be unimpaired and the invalid provisions shall be replaced by a mutually acceptable provision. The Parties agree that where the context of any provision indicates an intent that it shall survive the termination of this Agreement, then it shall so survive. This Agreement shall not create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind. Except as set forth in this Agreement, neither Party has the right to make commitments of any kind for the other Party. Under no circumstances shall any personnel of either Party be considered to be an employee or agent of the other Party. There are no intended third party beneficiaries of any provision of this Agreement. Damages may be an inadequate remedy in the event of a breach by either Party to this Agreement and that any such breach by either Party may cause the other Party great and irreparable injury and damage. Accordingly, both Parties agree that the Party claiming breach shall be entitled, without posting a bond or waiving any additional rights or remedies otherwise available to it at law or in equity or by statute, to injunctive and other equitable relief. This Agreement constitutes the entire understanding between the Parties concerning the subject matter hereof and supersedes all prior discussions, agreements and representations, whether oral or written and whether or not executed by the Parties. In the event of any inconsistency, the documents shall take precedence in the following order: Terms and Conditions, Ordering Documents, Managed Services Pricing, followed by all other Attachments. This Agreement may be signed in multiple counterparts and delivered by electronic means. All notices required hereunder shall be in writing and transmitted to the address for each Party as set forth in the Proposal. Notices shall be effective upon the date of confirmed delivery or at such time as delivery is refused by addressee upon presentation. The preamble hereto shall form an integral part of this Agreement. The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any of its provisions. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa, as the context may require. This Agreement shall be governed by the laws of the State of Maryland without regard to its conflict of laws provisions.

-- END OF TERMS AND CONDITIONS --