

**MIDDLESEX HOSPITAL**

**SOFTWARE**

**TERMS AND CONDITIONS**

This Amendment is by and between Middlesex Hospital of Middletown Connecticut and \_\_\_\_\_ (“Company”) with offices at \_\_\_\_\_.

**Recitals**

A. Hospital and Company have already entered into, or about to enter into, an agreement for services under which Company will provide certain software to Hospital.

B. The parties to the underlying service agreement desire to, and hereby do, amend that service agreement to incorporate the terms and conditions set forth below.

Now, Therefore, in consideration of the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Agreement Between Parties; Conflict.** These Terms and Conditions shall be deemed incorporated into and made a part of that certain agreement (the "Agreement") by and between Company and Middlesex Hospital for the license and/or provision of certain media and software (the "Software") by the Company to the Hospital. In the event of a conflict between these Terms and Conditions and the Agreement, these Terms and Conditions shall control and be deemed to supersede all such inconsistent provisions in the Agreement.

2. **Changes.** No modification, amendment, or change of these Terms and Conditions shall be valid unless in writing and signed by both parties.

3. **Warranty.**

(a) Company warrants that (i) the Software provided by the Company to Middlesex Hospital will be free from defects for a period of one (1) year from the date of installation and acceptance of the Software at Middlesex Hospital; and (ii) the Software will operate in conformance with the User Manuals and all other documentation that describes the use and functionality of the Software, except for *de minimus* non-conformities that do not interfere with the day-to-day operation of the Software (collectively, the "Documentation").

(b) If there is a breach of warranty, the Company shall, at Middlesex Hospital's option, within thirty (30) days from the date Middlesex Hospital notifies the Company of the defect or non-conformance (i) correct the defect or nonconformance in the Software so that it operates in conformance with the Documentation; (ii) replace any defective or non-conforming Software with software that is free of defects, performs in conformance with the Documentation and is reasonably satisfactory to Middlesex Hospital; or (iii) refund all amounts Middlesex

Hospital has pre-paid to the Company for the Software, any hardware purchased by Middlesex Hospital from Company solely for use in connection with the Software (the "Hardware"), any license fees, and any services provided by the Company to Middlesex Hospital in connection with the Software or Hardware (the "Services").

4. **Infringement.** Company represents and warrants that: (a) it is the owner of the Software and accordingly has adequate rights to license the use of the Software to Middlesex Hospital; and (b), the use by Middlesex Hospital of the Software will not infringe on any patent, copyright, trade secret or other property rights owned by a third party.

5. **Remedies for Infringement** In the event of any infringement or alleged infringement of copyright, patent or other property rights of a third party, Company will immediately: (a) remove from the Software any affected software components or data items; (b) replace these software components or data items with equivalent software components or data items; (c) hold harmless, defend, and indemnify Middlesex Hospital, its officers, directors, agents and employees from and against any and all costs, liabilities, claims, losses, damages, actions and expenses, including reasonable attorneys' fees, incurred or suffered by Middlesex Hospital which result from, are caused by, or are related to the infringement claim and from any third party proceedings against Middlesex Hospital in respect of such infringement or alleged infringement of copyright, patent or property rights; (d) refund to Middlesex Hospital on a pro-rata basis any pre-paid amounts under the Agreement; and (e) pay to Middlesex Hospital any costs, expenses, and damages incurred by Middlesex Hospital in connection with the replacement and/or substitution of another product for the Software or any part thereof, including without limitation any amount paid by Middlesex Hospital for Hardware which cannot be utilized in connection with the substitution or replacement products. Sections 4 and 5 shall survive termination of the Agreement.

6. **Indemnification.** Company agrees to indemnify and hold Middlesex Hospital, its officers, directors, employees and agents harmless from and against any and all claims, liabilities, losses, damages, expenses, and actions, including reasonable attorney's fees, which result from, are caused by, or are related to (a) Company's violation of federal, state or local statutes, regulations or ordinances (including without limitation, the Health Insurance Portability and Accountability Act of 1996, also known as "HIPAA"), (b) the acts or omissions of Company, its officers, directors, agents, employees, or representatives, (c) the breach of the Agreement by Company, its officers, directors, agents, employees, or representatives, and/or (d) the negligence or willful misconduct of the Company, its officers, directors, agents, employees, or representatives. This Section 6 shall survive termination of the Agreement.

7. **Connecticut Law.** The laws of the State of Connecticut will govern this Agreement without reference to conflicts of law principles. Company expressly consents to the jurisdiction of the state courts located in Middlesex Judicial District for the State of Connecticut, and in the United States District Court for the District of Connecticut. Venue for any disputes between the parties related to the Software shall be in those courts.

8. **Arbitration.** Any dispute arising directly or indirectly from the performance or breach of a party's obligations under this Agreement shall be resolved by

binding arbitration before the American Arbitration Association, using its then current Commercial Arbitration Rules. The panel shall consist of one arbitrator. The Arbitration Panel shall be authorized to resolve all questions of law and fact between the parties, but shall not be authorized to award special, consequential or punitive damages. Venue for the arbitration shall be in Middletown, Connecticut. Each party shall pay for its own legal fees incurred in the arbitration, but the parties shall evenly divide the cost of the arbitration itself. The award of the Arbitration Panel may be entered as a judgment in any court of competent jurisdiction.

9. **Assignment.** Neither party shall assign this Agreement or any rights hereunder without the prior written consent of the other party.

10. **Payment.** Payment terms are net sixty (60) days upon Acceptance of the Software and any Hardware by Middlesex Hospital.

11. **Acceptance.** Middlesex Hospital reserves the right to conduct an acceptance test of the Software before accepting it. In the Acceptance Test, the Hospital will test the functionality of the Software against any agreed upon specifications and the Documentation. The Acceptance Period will occur for thirty (30) days following first productive use. Any failure of the Software to conform to the specifications and Documentation will be an "Error." The Hospital will notify Company of any Errors at the completion of the Acceptance Test and give the Company twenty (20) days to cure the Error. Hospital will then retest the Software and determine whether to accept or reject it. If the Software is rejected, Company will refund all monies pre-paid to it by the Hospital under this Agreement. Unless the Company is notified at the end of the Acceptance Period of an "Error" it is understood between both parties that Acceptance shall have deemed to occur on the first day of the Acceptance Period.

12. **Termination.** Middlesex Hospital has the right to terminate all or part of the Agreement for any reason and without penalty by providing Company with thirty (30) days prior written notice. Middlesex Hospital will immediately cease conducting business if seller's name or identification number appears on any government sanction list and will not resume until rectified to the satisfaction of Middlesex Hospital, with no penalty to Middlesex Hospital.

13. **Default.**

(a) The Company shall be in default if it (i) fails to carry out any of its obligations hereunder or under the Agreement and such failure continues for a period of thirty (30) days, or (ii) is dissolved, liquidated or ceases doing business for thirty (30) days or more, makes an assignment for the benefit of creditors, commences, or has commenced against it, bankruptcy proceedings under the Federal Bankruptcy Code or under any other insolvency law, or has a trustee, receiver, custodian, or liquidator named for the purpose of general administration of such party's property.

(b) If the Company is in default hereunder or under the Agreement, Middlesex Hospital may at its option: (i) terminate the Agreement and all of Middlesex Hospital's obligations thereunder; (ii) demand and receive a refund based on a five (5) year straight-line amortization period of all amounts paid by it to the Company under the Agreement; and (iii)

exercise any and all rights and remedies available to it under the Agreement or at law or in equity. If the Agreement is terminated by Middlesex Hospital pursuant to this paragraph, immediately following such termination date, the Company shall deliver to Middlesex Hospital all proprietary and confidential data and other information belonging to or obtained from Middlesex Hospital.

14. **Confidentiality.**

(a) Company acknowledges and agrees that in the course of performing services hereunder, Company will obtain certain information relating to the Client's business, programs, internal practices, medical staff, and patients ("Confidential Information"). Company agrees that during the term of the Agreement and thereafter such Confidential Information is the sole and exclusive property of Middlesex Hospital, and Company agrees not to use any such information for Company's benefit or for the benefit of others, and not to disclose any such information for any purpose except as required by law. In the event that Company will have access to "Protected Health Information" as defined by 45 Code of Federal Regulations, parts 160 and 164, Company shall execute the Hospital's standard Business Associate Agreement. Should the Company decline to execute the Hospital's Business Associate Agreement, Hospital may terminate this Agreement and any underlying service agreements immediately and without further liability to Company.

(b) Improper disclosure or use of any such Confidential Information by Company will result in the immediate termination of this Agreement by Middlesex Hospital. Company acknowledges and agrees that Company's breach of Section II (a) hereof will result in irreparable harm to Middlesex Hospital. Accordingly, Middlesex Hospital shall be entitled to all remedies available to it at law or in equity for breach of Section 14 (a) including, without limitation, injunctive relief.

15. **Notices.** Whenever notice must be given under the provisions of this Agreement, such notice must be in writing and will be deemed to have been duly given by (a) hand delivery; or (b) certified mail, return receipt requested, postage prepaid; or (c) telecopier (with written confirmation of receipt), provided that a copy is also mailed by registered mail, return receipt requested, addressed to the parties at their respective address set forth in this Agreement.

16. **Force Majeure.** No party shall be liable for delay in performance hereunder due to forces beyond its control, including but not limited to acts of God, fires, strikes or other labor disputes, acts of war, acts of terrorism, or intervention by any governmental authority, and each party shall take steps to minimize any such delay.

17. **Severability.** In the event that any portion of these Terms and Conditions are held to be unenforceable, the remainder of the provisions shall continue in full force and effect. In such event, the parties shall, in good faith, modify these Terms and Conditions so as to achieve as much as can be achieved of the provision that was held unenforceable.

18. **UCC Applicability.** Except to the extent that the provisions of these Terms and Conditions are clearly inconsistent therewith, this Agreement shall be governed by any applicable provisions of Article 2 of the Uniform Commercial Code (UCC) in effect in the State of Connecticut. To the extent that this contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the Uniform Commercial Code, except where to deem such services as "goods" would result in an absurdity.

19. **Business Standards.** Seller agrees to abide by the Standards for Business Ethics and Conduct set forth by Middlesex Health Systems which can be found on the internet at <http://www.middlesexhealth.org/go/commonAboutUsVendors>.

ACCEPTED BY:

**Company name**

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Signature:

Print Name:

Title:

Date:

**Middlesex Hospital**

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Signature:

Print Name:

Title:

Date: