

Board of County Commissioners

Agenda Request

Date of Meeting: January 5, 2021

Date Submitted: December 3, 2020

To: Honorable Chairwoman and Members of the Board

From: Edward J. Dixon, County Administrator
Keith D. Maddox, Gadsden County Emergency Services Chief

Subject: Terms and Conditions Agreement between Butterfly Network Inc. and Gadsden County Emergency Services

Statement of Issue:

This item seeks board approval of the Terms and Conditions Agreement between Butterfly Network Inc. and Gadsden County Emergency Services.

Background:

Gadsden County Emergency Services is expanding the scope of emergency medical care provided to the citizens and visitors of our community. Part of this process includes the addition of ultrasonography for field imaging and procedures which requires a software subscription service for full device utilization, training and image storage on the cloud. This also allows for the County Medical Director to review images and data for quality control and medical oversight. The ultrasound devices and associated equipment are being purchased through funds approved by the BOCC via the EMS County Awards Grant C9020 and residual awards grant funds.

Analysis:

Approval of this agreement will facilitate the training and use of the ultrasound devices to improve patient care in Gadsden County.

Fiscal Impact:

The annual subscription cost of \$420.00 has been allocated in the FY 2020/2021 budget; account 144-53400-line item.

This initial subscription cost is funded through the awards grant C9020.

Options:

1. Approve the Terms and Conditions Agreement between Butterfly Network Inc. and Gadsden County Emergency Services.
2. Do not approve.
3. Board direction.

County Administrator's Recommendation:

Option 1.

Attachments:

- A. Subscription Terms and Conditions agreement

MASTER TERMS AND CONDITIONS

This Master Terms and Conditions (“Agreement”) is made as of _____, 2020 (the “Effective Date”), by and between BUTTERFLY NETWORK, INC., A DELAWARE C CORPORATION, and GADSDEN COUNTY BOARD OF COUNTY COMMISSIONERS (“Client”) (each a “Party” and collectively “Parties”).

WHEREAS, Butterfly is a company that provides portable ultrasound imaging probes and a hosted software service for viewing, using and storing the ultrasound images and imaging studies for various medical diagnostic purposes, research and education; and

WHEREAS, Client is a physician or other licensed health care provider, medical practice, medical school or other authorized user; and

WHEREAS, Butterfly desires to sell ultrasound imaging probes and provide the associated services to Client and Client desires to purchase such ultrasound imaging probes and receive the associated services from Butterfly.

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

1. **Scope of Services**

1.1 Subscription Services. Subject to the terms of this Agreement and payment of the amounts set forth in the Budgetary Quotation (as defined herein), Butterfly will provide Client with access to a specified number of End Users, (as defined herein), to use the Butterfly Subscription Service. The Subscription Service shall mean the hosted, on demand Web-based provision of applications, application programming interfaces, and platform services provided by Butterfly, which is accessed from Client owned and/or controlled computer systems via the Internet, (“Butterfly Cloud”) and the associated mobile application, which is installed on Client or end user owned and/or controlled mobile devices (“Butterfly iQ App”). The Documentation means documentation describing the design, features, use of and functionality of the Subscription Service and Devices (defined below), including any other documentation provided by Butterfly to Client in connection with the Services. The Subscription Service together with Subscription Support Services and any Professional Services (defined below), are collectively, the “Services.” Only a Client that is fully paid up and its designated employees and agents (“End Users”) may access and use the Subscription Service. Client is permitted to terminate and re-designate individual employees and agents as authorized End Users, provided that the total number of End Users does not exceed the number specified in the Budgetary Quotation. Client and End Users are expressly prohibited from authorizing the sharing of login credentials, sharing login credentials with unauthorized individuals, or otherwise making the Subscription Service available to more than the number of End Users specified in the Budgetary Quotation. All use of the Subscription Service by End Users is subject to the restrictions set forth in Exhibit A (End User Agreement). Client shall be responsible for ensuring that End Users execute such End User Agreement prior to such End User receiving access to the Subscription Service and any Devices.

1.2 Devices. Devices means the portable ultrasound imaging probes, which are used by Client and End Users to conduct ultrasound imaging, as more fully described in Exhibit B (Device Description), and which are connected to Client’s or an End User’s smartphone in order to enable the use of the Subscription Service, which includes the ability to immediately view the ultrasound image and any other Client Data (as defined below) and upload such Client Data for viewing, use and storage. Only Client and its designated employees and agents (“End Users”) may access and use the Devices. The following are additional terms that apply to Devices:

1.2.1. Unless otherwise indicated in Exhibit B (Device Description), shipping terms are FOB shipping point.

1.2.2. Title and risk of loss to Devices passes to Client upon delivery to Client based on shipping point.

1.2.3. When feasible, Butterfly reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delivery dates are approximate.

1.2.4. Client shall not have any right to return Devices for a refund after delivery except for Devices shipped in error that are different from the Devices listed on Exhibit B (Device Description) or as otherwise specified in the Budgetary Quotation.

1.3 Subscription Support Services. Butterfly will provide to Client reasonable technical support, maintenance, and generally available updates. Client shall not contract with or otherwise allow a third party to provide assistance or support for the Subscription Services or Devices without the prior written consent of Butterfly.

1.4 Professional Services. From time to time, Client may engage Butterfly to provide certain professional services (“Professional Services”), such as for training, implementation or customization of the Subscription Service. Fees for Professional Services will be based on Butterfly’s then applicable Professional Services rates. Each such engagement of Professional Services will be described in a Statement of Work that must be accepted in writing by an authorized representative of each Party. In the event of a conflict between the terms provided in this Agreement and the terms of any Statement of Work, the terms of this Agreement will prevail, except that the terms of the Statement of Work shall prevail over conflicting terms of this Agreement (but only with respect to such applicable Statement of Work) where the Statement of Work explicitly identifies such conflicting terms and confirms the intent of the Parties to supersede or modify the conflicting term of this Agreement.

1.5 Changes to Subscription Service. Butterfly may modify or delete any features of the Subscription Service in any manner that: (a) does not have an adverse impact on the Subscription Service or (b) may be necessary to meet any applicable legal, regulatory, or industry-standard requirements or demands. Butterfly shall notify Client as promptly as practicable in advance of such changes to the Subscription Service under clause (b) that have an adverse impact on the Subscription Service.

2. **Fees and Payment**

2.1 Fees. Client shall pay the amounts set forth in the Budgetary Quotation executed between the Parties and incorporated herein by reference, (the “Budgetary Quotation”) for the Devices and Subscription Service. No third party pass-through fees, direct fees, or any other transaction costs, are included; Client is solely responsible for payment of any such fees and costs. In the event of a conflict between the Budgetary Quotation and the terms of this Agreement, the Budgetary Quotation shall govern.

2.2 Invoices. All invoices will be issued with the frequency and terms as specified in the Budgetary Quotation. All payments shall be made in U.S. Dollars by bank wire or via check. Overdue amounts will be subject to a late payment charge at the lesser of one and one half percent (1.5%) per month or the highest rate permissible under applicable Law (as defined herein) for the actual number of days elapsed from the date due. Any payment not received from Client by the due date may result in suspension of Client’s ability to access the Services until payment is made. Client shall pay any applicable state, federal, or other sales and use taxes that may be associated with the purchase of the Devices and Services under this Agreement, and Butterfly may collect all applicable sales taxes. If Client claims tax-exempt status, Client

will provide Butterfly with documentation of such status. If applicable, all reasonable and customary travel related expenses, such as airfare, hotel, transportation, and meals will be billed to Client for any on-site work performed under this Agreement. If travel expenses are incurred, Butterfly will make reasonable efforts to keep travel costs to a minimum.

2.3 Disputes. If Client has a good faith dispute regarding payment for a particular Device or Service, such dispute shall not entitle Client to withhold payment for any other Device or portion of Service. Client grants Butterfly a purchase money security interest in all Devices listed in Exhibit B (Device Description) until full payment is received, and Client agrees to perform all acts and execute all documents as may be necessary to perfect Butterfly's security interest.

2.4 Discount Disclosure. The dollar value of the discounts or other reductions in price pursuant to this Agreement, if any, and any other items and services not paid for by Customer and received by Customer under this Agreement are "discounts and other reductions in price" under Section 1128B(b)(3)(A) of the Social Security Act (42 U.S.C. § 1320-a-7b(b)(3)(A)), as amended. It is the intent of the parties to comply with the Anti-kickback Law Discount Safe Harbor (42 C.F.R. § 1001.952(h) as amended). The Discount Safe Harbor requires that certain discounts be reported and or passed on to Federal and State health care programs, such as Medicare and Medicaid. Customer understands and agrees it must properly disclose the discounts or reductions in price, and reflect such discounts or reductions in price in the costs claimed or charges made, under any Federal or State health care program which provides cost or charge-based reimbursement to Customer for the items and services covered by this Agreement. Customer shall be solely responsible for determining whether the savings or discounts it receives must be reported or passed on to payors.

3. **Data Privacy**

3.1 Obligations. Client acknowledges and agrees that Butterfly does not require any specific data from Client or End User, that Client and End User controls the content of any Client Data (as defined below) that is inputted, transmitted, uploaded, transferred, submitted, disclosed, processed, collected, stored, replicated or in any other way accessed or used through the use of the Subscription Service, and that Butterfly has no obligation to monitor the content of any Client Data. Client shall be responsible for procuring any necessary consents and making any notifications under applicable Law with respect to the provision of the Client Data to Butterfly through the Subscription Service and the processing of such Client Data by Butterfly through the Subscription Services. Upon request of Butterfly, Client will provide Butterfly with documentation to support such consent.

3.2 Compliance with Law. Butterfly acknowledges that in the performance of the Subscription Service, Butterfly may have access to Client Data. Butterfly shall only use and disclose Client Data in accordance with applicable Law, including without limitation HIPAA as amended by the HITECH Act, and the terms of the Business Associate Agreement ("BAA") attached hereto as Exhibit C (Business Associate Agreement). Law means: (a) any national, state, local or other law or statute in any applicable jurisdiction; (b) any rule or regulation issued by a relevant regulatory agency; and (c) any written or authoritative interpretation by such relevant regulatory agency of any such law, statute, rule or regulation.

4. **Ownership**

4.1 Butterfly Property. Butterfly owns all right, title and interest in and to: (a) the Subscription Service and the technology, software, hardware, products, processes, algorithms, user interfaces, documentation, user manuals and know-how related to the Subscription Service; (b) any data and content generated through the use or execution of the Subscription Service to the extent such data or content does not include Protected Health Information ("PHI") as that term is defined in HIPAA; (c) any and all Butterfly Confidential Information (see Section 12); (d) Anonymized Data (as defined below); (e) the Devices,

subject to Section 4.3 (Client Property), and the technology, software, hardware, products, processes, algorithms, user interfaces, documentation, user manuals and know-how related to the Devices; and (f) and any and all Intellectual Property Rights embodied in (a)-(e) (collectively the “Butterfly Property”). Intellectual Property Rights means patents, inventions, utility models, trademarks, service marks, trade and service names, copyrights, database rights and design rights (whether or not any of them are registered, and including applications for registration of any of them), rights in know-how, moral rights, trade secrets and rights of confidence and all rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which may exist anywhere in the world. Butterfly shall own any and all developments, inventions and work product created under any Professional Services, including but not limited to training materials, implementation guides and customizations of the Subscription Service. Butterfly shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services and Devices any suggestions, enhancement requests, recommendations or other feedback provided by Client and End Users relating to the Services and Devices. All rights not expressly granted to Client herein are expressly reserved by Butterfly.

4.2 Client Data. As between the Parties, the data, images, imaging studies and content that Client or an End User inputs, transmits, uploads, transfers, submits, discloses or otherwise provides to the Subscription Service will remain exclusive property of Client (collectively, the “Client Data”). Notwithstanding anything in this Agreement or in any Business Associate Agreement between the Parties to the contrary, and notwithstanding any termination or expiration of this Agreement, Client Data will not include Anonymized Data, which is defined as Client Data that has been fully and permanently de-identified in accordance with HIPAA.

4.3 Client Property. Following receipt of the Devices and payment of the Device fees and implementation fees, as applicable and as set forth in the Budgetary Quotation, Client owns all right, title and interest in and to the Devices. Subject to the aforementioned sentence, Client Data and Devices are, collectively, “Client Property.”

5. **System Monitoring**. Butterfly expressly reserves the right to monitor any and all use of the Subscription Services, including certain performance characteristics of the Device. Butterfly may gather system data for the purpose of optimizing the Subscription Services. This information includes, but is not limited to, data regarding memory usage, connection speed and efficiency, as well as temperature, battery and other Device characteristics. Butterfly shall have no obligation to monitor the Client Data, but reserves the right to monitor the Subscription Services for purposes of verifying compliance with the terms of this Agreement.

6. **Client Responsibilities**

6.1 Medical Diagnosis and Treatment. Client acknowledges and agrees that all clinical and medical treatment and diagnostic decisions are the responsibility of Client and its professional healthcare providers.

6.2 Use for Clinical Diagnostic Purposes. Client acknowledges and agrees that it and its End Users will use the Devices and Services consistent with the Device labeling, the Butterfly Terms of Use and only for clinical diagnostic purposes in the diagnosis or treatment of a disease or condition, for teaching, research or other authorized purposes and not for any entertainment or amusement purposes.

6.3 Maintenance. Client is responsible for maintaining the Device in accordance with all written instructions and labeling, including cleaning and disinfecting the Device.

6.4 Client Equipment. Client is responsible for obtaining and properly maintaining any Client Equipment, defined as: (a) Client’s computer hardware, software and network infrastructure used to access

the Subscription Service; (b) the smartphones used to connect to the Device; (c) other data storage and viewing platforms and networks including but not limited to Client's internal systems (e.g., EMR and DICOM) for viewing and accessing ultrasound images and imaging studies; and (d) any ancillary services needed to connect to, access or otherwise use the Devices and Subscription Service. Client shall be responsible, and under no circumstances will Butterfly or its Affiliates or any of their licensors or suppliers be responsible, for any loss, damage or liability arising out of any Client Equipment, including any delays, inaccuracies, errors, malfunctions, security failures or other incident attributable to Client Equipment.

6.5 Restrictions on Use. Client shall not, and shall not allow or assist any End User or other entity to: (a) use the Device in a manner inconsistent with its labeling; (b) rent, lease, sublicense, assign, distribute, transfer, copy, reproduce, download, display, modify or timeshare or otherwise make the Butterfly Property or any portion thereof available to any third party other than End Users as contemplated by this Agreement; (c) use the Devices or Services to send or store infringing or unlawful material or material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (d) modify, copy or create derivative works based on the Butterfly Property, provided that Client may print, annotate or export, Client Data contained in certain reporting/reviewing/viewing functions but only to the extent expressly permitted in the Documentation and only for purposes of providing medical care to the individual patient associated with such Client Data; (e) translate, reverse engineer, decompile, disassemble, or otherwise attempt to discover any source code or underlying ideas of any Butterfly Property, or modify any Butterfly Property, except to the extent (but only to such extent) that applicable Law prohibits such restrictions; (f) access or use the Butterfly Property to develop or create competing products or services or copy any features or user interface of the Butterfly Property or otherwise use such Butterfly Property as a component of or a base for products or services prepared for commercial sale, sublicense, lease, access or distribution; (g) attempt to repair the Butterfly Property; (h) disable any security devices or codes on the Butterfly Property; (i) alter, remove, or obscure any proprietary rights notices on the Butterfly Property or related Documentation; (j) create Internet "links" to or from the Subscription Service, or "frame" or "mirror" any content forming part of the Subscription Service except that Client may create links for sharing images and imaging studies consistent with the Documentation; and (k) use the Subscription Service, for purposes of benchmarking or other comparative analysis intended for publication without Butterfly's prior written consent.

6.6 Liability for Content. Client shall be responsible for, and under no circumstances will Butterfly or its Affiliates or any of their licensors or suppliers be responsible, for any loss, damage or liability arising out of any Client Data, including any mistakes or inaccuracies contained in the Client Data, the use (or misuse or misappropriation) or subject matter of the Client Data, or Client Data while it resides in or is stored on Client Equipment. Client is solely responsible for uploading Client Data for storage in accordance with the Documentation and for any loss of Client Data resulting from Client's failure to so upload as further described in Section 6.9.

6.7 Security of Account. Client agrees to maintain all security regarding its and its End Users' account ID, password, and connectivity, including its computer networks. If Client's or its End Users' account ID or password are stolen, or otherwise compromised, Client is obligated to immediately change the password and inform Butterfly of the compromise. Client shall be responsible, and under no circumstances will Butterfly or its Affiliates or any of their licensors or suppliers be responsible, for any loss, damage or liability arising out of any compromise of Client's and its End Users' access credentials, Client Equipment and/or computer networks.

6.8 Location of Use. Client agrees and acknowledges that all use of the Subscription Service and Devices by it and its End Users will occur in the United States.

6.9 Client Data Not Uploaded to Subscription Service. Client agrees and acknowledges that the Client must be logged into the Subscription Service in order to use the Device. All Client Data generated

through use of the Device may be transferred to the Subscription Service or Client's internal system/network for storage and subsequent use, provided that if Client or End User logs out of the Subscription Service without selecting an option to upload such Client Data for storage and subsequent use purposes, the Client Data will be deleted and will be unrecoverable through use of the Subscription Service.

6.10 Security Requirements. Client agrees and acknowledges that it will: (a) establish and maintain industry standard information, physical and administrative security protocols, including virus protection, for all Client Equipment; (b) establish and maintain backup and disaster recovery plans for any Client Data not uploaded to the Subscription Service; and (c) prevent unauthorized access to the Subscription Service and Devices and interception of transmission of Client Data from the Device to the smartphone.

7. **Hosted Security**. Butterfly maintains, and will continue to maintain throughout the Term of this Agreement, security measures to protect Client Data and prevent unauthorized access in accordance with applicable Law.

8. **Audit**. During the Term of this Agreement and for a period of one (1) year thereafter, Butterfly shall have the right (at its own expense, upon reasonable notice, and no more frequently than once per calendar year unless good cause exists) to conduct or have a third party auditor conduct an inspection of the compliance by Client (including any other persons or entities that are permitted to use or access the Services and Devices) of this Agreement. Client will, and shall cause its Affiliates, employees, subcontractors, agents, representatives and consultants, to cooperate in good faith with such audit activities. In the event that any such audit reveals an underpayment by the Client hereunder, and such underpayment is confirmed, Client shall promptly reimburse Butterfly for the amount of such underpayment. In the event an audit uncovers a breach of this Agreement, Client agrees to pay Butterfly the costs of such audit within ten (10) days of receipt of notice of the results of such audit and the costs therefor.

9. **Representations and Warranties; Disclaimer of Warranties**

9.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party as of the Effective Date that: (a) it has the full right, power and authority to enter into this Agreement, to perform its obligations hereunder and (b) this Agreement has been duly executed by it and is legally binding upon it, enforceable in accordance with its terms, and does not conflict with any agreement, instrument or understanding, oral or written, to which it is a Party or by which it may be bound, nor violate any material Law having jurisdiction over it.

9.2 Butterfly Representations and Warranties.

9.2.1. Butterfly warrants that the Subscription Service, when properly used for the purpose and in the manner specifically authorized by this Agreement and in accordance with the Documentation, will perform materially in accordance with the Documentation. The foregoing warranty shall be effective for so long as Client is a subscriber in good standing to the Subscription Service. The warranty in this Section 9.2.1 shall not apply to the Subscription Service to the extent that the Subscription Service has been modified by any party, other than Butterfly. Butterfly shall have no obligation to Client under the warranty, or otherwise, if: (a) the failure of the Subscription Service to meet the warranty or conform materially to the Documentation can be attributable to Client Equipment, third party software or hardware or Client Data or (b) the failure of the Subscription Service to meet the warranty or conform substantially to the Documentation can be attributable to causes that are not the responsibility of Butterfly.

9.2.2. Butterfly represents and warrants that any Professional Services will be performed by trained individuals in a professional and workperson-like manner.

9.2.3. Unless otherwise specified in the Budgetary Quotation, Butterfly warrants that for twelve (12) months from acceptance of the Device that: (a) the Device will be free from defects in title, material and workmanship under normal use and service and (b) the Device will perform substantially in accordance with the Documentation. Butterfly shall not have any obligation to Client hereunder if the warranty claim results from or arises out of: (i) the use of the Device in combination with any software, tools, hardware, equipment, supplies, accessories or any other materials or services not furnished by Butterfly or recommended in writing by Butterfly or using or combining the Device with any item or data that does not properly and unambiguously exchange data with the Device in accordance with the Documentation; (ii) the use of the Device in a manner or environment, or for any purpose, for which Butterfly did not design or license it, or in violation of Butterfly's recommendations or instructions on use; (iii) any alteration, modification or enhancement of the Device by Client or any third party not authorized or approved in writing by Butterfly; (iv) any defect or deficiency (including failure to conform to Documentation) that results, in whole or in part, from any improper storage or handling, failure to maintain the Device in the manner described in the Documentation, inadequate back-up or virus protection or any cause external to the Device or beyond Butterfly's reasonable control, including, but not limited to, power failure and failure to keep the Device clean and free of dust, sand and other particles or debris; or (v) any use or maintenance, or any extraordinary use, repair or service of the Device, by anyone other than Butterfly or its authorized representatives. In addition, this warranty does not cover the Device to the extent it is used in any country other than the country to which Butterfly ships the Device.

9.2.4. Client will promptly notify Butterfly of any Device defect subject to the warranty in 9.2.3 above and return the Device as set forth herein at Butterfly's expense. Client will follow the cleaning and disinfection procedures set forth in the Documentation and any other instructions from Butterfly regarding Device return, and will package the Device in order to protect it from damage during return shipping. Upon receipt, Butterfly will promptly evaluate the Device. If Butterfly confirms that the Device is defective and subject the warranty in 9.2.3, Butterfly will promptly replace the defective Device with either a new or refurbished Device. If Butterfly determines that the damage resulted from any of the causes set forth in 9.2.3 (i) – (v), Butterfly will so notify Client and Client will have the option of purchasing a replacement Device.

9.3 Exclusive Remedy. Butterfly's sole obligation and Client's sole remedy for breaches of the warranty in Section 9.2.1 and 9.2.3 is for Butterfly to use commercially reasonable efforts to provide services to correct the failure of the Subscription Service or Devices to operate in accordance with the Documentation. **THE FOREGOING REMEDY IS EXCLUSIVE, IS SUBJECT TO THE LIMITATIONS SET FORTH HEREIN AND SHALL BE CLIENT'S SOLE REMEDY WITH RESPECT TO ANY CLAIM OF BREACH OF WARRANTY ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

9.4 Client Representations and Warranties. Client represents and warrants that it will, and will ensure that its End Users, use the Services and Devices only in accordance with all applicable Laws (including but not limited to HIPAA).

9.5 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9, BUTTERFLY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR

STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS, OR NON-INFRINGEMENT. BUTTERFLY DOES NOT WARRANT, REPRESENT, OR GUARANTEE THAT THE SERVICES SHALL BE UNINTERRUPTED, ERROR-FREE, OR THAT THE SERVICES OR DEVICES WILL PROVIDE ANY SPECIFIC RESULTS FOR CLIENT, OR PROVIDE ANY RESULTS AT ALL. FURTHER, CLIENT ACKNOWLEDGES AND UNDERSTANDS THAT THE SERVICES MAY BE CONTINGENT ON THIRD PARTY PERFORMANCE AND BUTTERFLY CANNOT GUARANTEE AND IS NOT LIABLE FOR THE SAME. THE SERVICES AND DEVICES, AND DELIVERABLES, IF APPLICABLE, PROVIDED HEREUNDER ARE NOT INTENDED TO SUBSTITUTE FOR, OR TO REPLACE THE SKILL, KNOWLEDGE, AND EXPERIENCE OF CLIENT, END USER OR OTHER LICENSED PHYSICIANS OR OTHER CARE PROVIDERS. BUTTERFLY ASSUMES NO RESPONSIBILITY FOR PATIENT CARE AND IS NOT PROVIDING THE DEVICES OR ANY SERVICE HEREUNDER TO THE CLIENT AS A SUBSTITUTE OR REPLACEMENT FOR THE MEDICAL JUDGMENT OF THE CLIENT'S PHYSICIANS, END USERS OR OTHER CARE PROVIDERS. BUTTERFLY HAS NO, AND DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR, AND CLIENT RELEASES BUTTERFLY FROM, ANY CLAIMS ARISING FROM OR RELATED TO THE CONDUCT OF THE CLIENT'S BUSINESS OR FOR ACTS OR OMISSIONS OF CLIENT AND END USERS IN THE PROVISION OF PATIENT CARE, AND THAT ANY RELIANCE UPON THE BUTTERFLY PROPERTY OR SERVICES HEREUNDER SHALL NOT DIMINISH THE CLIENT'S RESPONSIBILITY FOR PATIENT CARE. Further, Butterfly does not and cannot control the performance of Internet or cellular services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Client's connections to the Internet or cellular service (or portions thereof). Although Butterfly will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Butterfly cannot guarantee that such events will not occur. BUTTERFLY DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES WHICH ARE NOT BUTTERFLY'S SUBCONTRACTORS.

9.6 Warranties to Client Only. The warranties stated in this Section are made only to Client and Butterfly shall have no liability to any third party, including any End User, with respect to the Services or Devices as a result of the warranties contained herein.

10. **Limitation of Liability**

10.1 Liability Limitation. IN NO EVENT SHALL EITHER PARTY OR BUTTERFLY'S THIRD PARTY SUPPLIERS HAVE LIABILITY ARISING OUT OF OR PERTAINING TO THIS AGREEMENT TO THE OTHER PARTY OR ANY OTHER THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES OF ANY KIND BASED ON ANY CLAIM OR LEGAL THEORY, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, LOST OPPORTUNITY, LOST SAVINGS, LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTION OR COST OF SUBSTITUTE SERVICES OR TECHNOLOGY, EVEN IF INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE. ADDITIONALLY, EXCEPT FOR CLAIMS ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 11, NEITHER PARTY'S NOR BUTTERFLY'S SUPPLIERS' OR LICENSORS' AGGREGATE LIABILITY TO THE OTHER PARTY AND ANY AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND END USERS FOR ANY CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE ARISING FROM THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN REGARDLESS OF THE FORM OF ACTION (INCLUDING, BUT NOT LIMITED TO, ACTIONS FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, RESCISSION AND BREACH OF WARRANTY) SHALL EXCEED THE FEES

CLIENT PAID IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. CLIENT HEREBY RELEASES BUTTERFLY FROM ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THIS LIMITATION. THIS LIMITATION OF LIABILITY SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS AND NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY.

10.2 Transmission of Data. Butterfly is not responsible for loss or alteration of Client Data in transmission (including in transmission from the Device to the smartphone and from the smartphone to the Subscription Service or Client's internal system/network), due to improper transmission by Client or an End User, or failure by Client, an End User or any third party to act on any communication transmission to or by Client or an End User through the Subscription Service or through use of a Device. Butterfly is not responsible for any Client Data generated through use of the Device but not uploaded to the Subscription Service.

11. **Indemnity**

11.1 Butterfly's Indemnification Obligations. Butterfly shall defend, indemnify, and hold harmless Client and its Affiliates, and their respective directors, officers, and employees against any and all actions, claims or assertions brought against them by a third party ("Claims"), that the Subscription Service or Devices, when used within the scope of and in accordance with this Agreement and the Documentation, infringes a United States patent or copyright and will pay resulting costs, damages, and attorney fees finally awarded. In the event that the Subscription Service and/or Device in the opinion of Butterfly, is likely to or does become the subject of a claim of infringement, Butterfly shall have the right at its sole option and expense to: (a) modify the Subscription Service and/or Device to be non-infringing provided that such modification does not fundamentally change the functionality of the Subscription Service and/or Device; (b) obtain for Client a license to continue using the Subscription Service and/or Device at no additional charge to Client; or (c) if neither (a) nor (b) are reasonably practicable, terminate the Agreement and refund to Client the pro rata portion of fees paid to Butterfly for such portion of the Subscription Service and/or Device thereof that cannot be utilized due to such infringement.

11.2 Butterfly shall have no liability under this Section 11 for any such claim based upon: (a) any component of software provided by Client or any third party; (b) any modification by a party other than Butterfly, unless such modification was at the direction of Butterfly; (c) the combination, operation or use of the Subscription Service and/or Device with a software program(s) or data not part of Subscription Service and/or Device if the claim would have been avoided had such combination, operation or use not occurred; (d) the Subscription Service and/or Device being used in a manner not authorized by this Agreement; and (e) continued use of the Subscription Service and/or Device from the date of written notice wherein Butterfly informs Client that such continued use may lead to a claim. This Section 11.1 sets forth Butterfly's sole and exclusive obligation and liability, and Client's sole and exclusive remedy, for any infringement or misappropriation of intellectual property rights of any kind.

11.3 Client's Indemnification Obligations. Client shall indemnify and defend Butterfly and its Affiliates, licensors, and suppliers, and their respective directors, officers, shareholders, employees, contractors and agents from and against any and all Claims and all liabilities, awards, damages, settlements, fees, penalties, costs and expenses (including reasonable attorney's fees) owing to third parties (including for avoidance of doubt, government and regulatory agencies) in connection therewith (collectively, "Losses"), arising from: (a) any gross negligence or willful misconduct by Client; (b) any failure by Client to procure appropriate consents or authorizations, including from patients; (c) any failure to comply with the End User Agreement attached hereto; (d) breach of Section 6 (Client Responsibilities); (e) Client's and its End Users' use or misuse of the Services and/or Devices; (f) Client Data (whether properly or improperly obtained and/or transmitted); (g) Client Equipment, including, without limitation, any failure or malfunction caused by the smartphone connected to the Device; (h) Client's and/or its End Users' failure

to comply with any applicable Law to which it may be subject in the use of the Services; (i) the consequences of Client's or End Users' utilization of the Services and/or Devices in respect of any third party; and (j) any allegation that the Client Property infringes the Intellectual Property Rights of a third party.

11.4 **Indemnification Procedure.** The Party having the benefit of the indemnification obligation under this Section 11 (the "Indemnitee") shall: (a) give the Party having the indemnification obligation (the "Indemnitor") prompt notice of any claim; (b) allow the Indemnitor to have sole control over the defense and settlement of the claim, provided, however, that the Indemnitee shall have the option, at its sole discretion, to participate in the defense of any such claim using attorneys selected by it, the costs and expenses of which shall be the responsibility of Indemnitee; and (c) provide all assistance reasonably requested by Indemnitor, at Indemnitor's expense, in the defense and settlement of the claim. The Indemnitor will not consent to the entry of any judgment or enter into any settlement with respect to a Claim without the Indemnitee's prior written consent (not to be unreasonably withheld or delayed) unless: (i) the judgment or proposed settlement involves only the payment of monetary damages by the Indemnitor, and does not impose injunctive or other equitable relief upon or otherwise adversely affect the Indemnitee; (ii) there are no additional Claims pending against the Indemnitee, and no adverse impact on existing Claims, as a result of the judgment or proposed settlement; and (iii) the Indemnitee will have no liability with respect to such judgment or proposed settlement and will not otherwise be materially and adversely affected by the terms of such settlement.

12. **Confidentiality.** "Confidential Information" means any confidential and proprietary information related to a Party's business belonging to one Party ("Discloser"), and disclosed to the other Party ("Recipient"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including information concerning research, development, design details and specifications (including beta versions of functionality), financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans, internal business processes, product designs, the terms and conditions of this Agreement (including pricing and other terms reflected in Exhibits hereto or other order forms), and any additional information that any End User or other third party has disclosed to Discloser in confidence and that Discloser is permitted to disclose to Recipient under the terms and conditions of this Agreement. Any information related to the Services, Devices or other Butterfly Property shall be deemed to be the Confidential Information of Butterfly, and any Client Data shall be deemed to be the Confidential Information of Client. Recipient shall only use Confidential Information of the Discloser for the purposes of this Agreement and shall keep such information in strict confidence. Recipient shall restrict disclosure of Confidential Information solely to its employees, attorneys, accountants, contractors and other representatives with a need to know, not disclose it to any third parties, except End Users as permitted hereunder, and use no less than reasonable care in its obligations. Except as expressly set forth elsewhere in this Agreement, all Confidential Information shall remain the property of the respective Discloser. Information will not be deemed "Confidential Information" if such information: (a) is generally available to the public (other than through breach of this Agreement); (b) is received from a third party lawfully empowered to disclose such information without being subject to an obligation of confidentiality; or (c) was rightfully in the Recipient's possession free of any obligation of confidence at the time it was communicated to the Recipient. Notwithstanding the above, the Recipient will not be in violation of this Section 12 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Recipient provides the Discloser with prompt written notice of such disclosure where reasonably possible in order to permit the Discloser to seek confidential treatment of such information.

13. **Governing Law.** This Agreement shall be governed by the laws of the state of Florida, without giving effect to any conflict of law principles. The Parties hereby waive any objection to the exclusive

jurisdiction and venue of the State of Florida and the Federal Courts within the Northern District of Florida. Venue for all state court actions shall be found in Gadsden County Florida.

14. Term and Termination

14.1 Term. The Agreement shall commence on the Effective Date and shall continue in effect for an “Initial Term” of twelve (12) months. Following the Initial Term, the Client shall have the option to renew the contract for subsequent terms of the same length as the Initial Term, and shall in no event be longer than twelve (12) months, (each, a “Renewal Term”). In the event that the Contract is not renewed, this contract shall terminate pursuant to the provisions in section 14.4 hereinbelow. Either Party may terminate this Agreement as set forth herein.

14.2 Termination for Breach. This Agreement may be terminated by either Party for material breach if such breach has not been cured by the other Party within thirty (30) days receipt of written notice of such breach by such other Party. If the Agreement is terminated by Butterfly as a result of a material breach by Client, Client shall remain liable for the payment for the entire Subscription Service Fee, as applicable, for the then current Term, as the case may be, and any unpaid amounts still due and owing for Devices.

14.3 Suspension. Butterfly may suspend the provision of the Subscription Service to Client under this Agreement effective immediately upon notice if: (a) Client fails to pay any portion of the fees due under the Budgetary Quotation within thirty (30) days after receiving written notice from Butterfly that payment is past due; (b) if Client or an End User breaches Section 6 (Client Responsibilities); or (c) if Client’s or an End User’s use of the Subscription Service: (i) poses a security risk to the Services or any other third party or (ii) may adversely impact Butterfly’s systems, networks, any Butterfly Property or the data of any other Butterfly client. During any such suspension, or in the event that the Subscription Service is unavailable for any reason, Client is solely responsible for continuity of patient care, including, identifying alternate means of accessing diagnostic images, imaging studies and Patient Data.

14.4 Effects of Termination. All subscriptions extend for a mandatory minimum period of one (1) year. Users choosing to discontinue after this first year will maintain the ability to scan with the Butterfly iQ and access their existing studies in the cloud but will no longer be able to archive new studies. Upon expiration or termination of this Agreement under this Section 14, Butterfly shall immediately terminate Client and any End Users’ ability to archive new studies. In accordance with the Business Associate Agreement executed between the parties, upon client’s request, Butterfly will return or destroy using a non-recoverable method, Client Data, excluding Anonymized Data. Butterfly will be permitted to retain Client’s Confidential Information if such retention is strictly necessary to meet Butterfly’s legal compliance obligations, is done pursuant to Butterfly’s records management program, and is limited to the minimum Client Confidential Information and minimum retention period needed to meet these obligations. Client shall immediately pay to Butterfly all amounts due and payable prior to the date of such expiration or termination and, except in the event of termination by Client due to breach by Butterfly, all unpaid Subscription Fees that would become due under the then-current Subscription period if such termination did not occur.

14.5 Survival. Sections 2 (Fees and Payment), 3 (Data Privacy), 4 (Ownership), 6.6 (Liability for Content), 6.7 (Security of Account), 8 (Audit), 9.3 (Exclusive Remedy), 9.5 (Disclaimer of Warranties), 9.6 (Warranties to Client Only), 10 (Limitation of Liability), 11 (Indemnity), 12 (Confidentiality), 13 (Governing Law), 14 (Term and Termination), 15.4 (Entire Agreement), 15.5 (Notices), 15.8 (Severability), 15.9 (Waiver; Modification), and 15.10 (Counterparts).

15. General

15.1 Independent Contractors. The Parties are independent contractors. Nothing in this Agreement shall be construed to create a joint venture, partnership, franchise, or an agency relationship between the Parties.

15.2 Insurance. The Parties, at their own expense, shall procure and maintain policies of insurance required by Law and at such levels as are appropriate and customary for each industry, and the scope of activities and operations and a Party's obligations hereunder. Upon reasonable request, each Party shall furnish to the other a Certificate of Insurance evidencing such coverage.

15.3 Assignment. This Agreement may not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld; provided however, Butterfly may freely assign this Agreement without the consent of the other Party, in whole or in part, in connection with a merger, consolidation, reorganization or transfer of all or substantially all of Butterfly's assets or stock to a successor. Any attempted assignment in violation of this Section 15.3 shall be void. This Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

15.4 Entire Agreement. This Agreement as executed by the Parties constitutes the complete and exclusive agreement and understanding between the Parties and terminates and supersedes any prior agreement or understanding relating to the subject matter hereof between Butterfly and Client. None of the provisions of this Agreement can be waived or modified except in a writing signed by both Parties. There are no representations, discussions, proposals, promises, agreements, warranties, covenants or undertakings, whether oral or written, other than those contained herein.

15.5 Notices. Notices must be in writing; delivered: (a) personally; (b) by certified mail return receipt requested; (c) by facsimile transmission with a confirming copy sent the same day by first class mail; or (d) by a nationally recognized overnight courier service; and addressed to the addresses set forth above. Each notice shall be deemed given upon receipt of such notice by the other Party. All notices shall be sent to the Parties at the following addresses:

[INSERT BUTTERFLY ADDRESS]

Gadsden County Board of County Commissionoerns
9 E. Jefferson Street
Quincy, Florida 32351

15.6 Force Majeure. Neither Party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, or any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delays in transportation or communications, internet or telecommunications failures, cyberattacks or any act or failure to act by the other Party, its employees, agents or contractors. The Parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of a substantial delay in the performance of this Agreement.

15.7 Publicity. Butterfly may issue one (1) press release within thirty (30) days of the Effective Date of this Agreement announcing the existence of this Agreement and generally describing the terms hereof or as otherwise mutually agreed by the Parties. During the Term of this Agreement, Butterfly may use Client's name and logo on the Butterfly web site and in Butterfly's collateral marketing materials,

provided that Client has approved in writing the form of any such use, such approval not to be unreasonably withheld.

15.8 Severability. If one or more provisions of this Agreement are held to be unenforceable under Applicable Laws, the Parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each Party as closely as possible to that under the provision rendered unenforceable. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then: (a) such provision shall be excluded from this Agreement; (b) the balance of the Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

15.9 Waiver; Modification. If a Party waives any term or provision or the other Party's breach of this Agreement, such waiver shall not be effective unless it is in writing and signed by the Party against whom such waiver is asserted. No waiver by a Party of a breach of this Agreement by the other Party shall constitute a waiver of any other or subsequent breach by such other Party. This Agreement may be modified only if authorized representatives of both Parties consent in writing.

15.10 Counterparts. This Agreement may be executed in counterparts.

BUTTERFLY NETWORK, INC.

GADSDEN COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____ By: _____
Brenda A. Holt, Chairwoman

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

Exhibit A

End User License Agreement

The Butterfly Network, Inc. platform (Butterfly iQ) is a cloud-based ultrasound image acquisition and sharing platform for patient care, research, education or other authorized use. The examination and associated patient information that you will store, send, and/or receive through Butterfly iQ will be transferred and stored in accordance with HIPAA standards. By clicking the accept button, you acknowledge and agree to the following:

- You have the authority and the right to use the login credentials that you are using, and to access, use, transmit, and share the imaging examination and protected health information (PHI) of the associated patients.
- You will not share your login credentials or otherwise permit unauthorized individuals to access Butterfly iQ.
- You are a licensed physician in good standing or otherwise qualified to use Butterfly iQ.
- You have obtained any required consents, authorizations, or other permissions necessary to share the image and associated patient information and have otherwise taken steps to ensure that the transmission complies with applicable law.
- You are not purporting to be anyone other than yourself (or a person for whom you have legal authority to act).
- You are adhering to all international, national and/or state laws/regulations that govern the exam and associated PHI.
- You will only use Butterfly iQ in accordance with the Terms of Use and the Device labeling.
- You are sharing this imaging examination and associated PHI for purposes of research, education or continuity of care and not for any illegal or malicious purpose.
- Butterfly Network, Inc. is not the intended recipient of any imaging examination, rather, Butterfly Network, Inc., provides a platform for the storage and transfer of imaging examinations from one health care provider to another.
- Butterfly Network, Inc., is not a healthcare provider and is not responsible for the medical care or treatment of any patient.
- Butterfly Network, Inc., will not be responsible for the content, results, diagnoses (or lack thereof) in the data provided and/or transmitted and will not review, verify, or provide any opinion or consultation regarding same.
- You agree to hold Butterfly Network, Inc., harmless from any costs or damages arising from your use, misuse or reliance on this system, except to the extent that such costs or damages are caused by Butterfly Network, Inc.'s gross negligence or intentional misconduct.

Exhibit B

Device Description

Butterfly iQ is a general-purpose diagnostic ultrasound imaging system for use by a qualified and trained healthcare professional enabling diagnostic imaging and measurement of anatomical structures and fluid.

Butterfly iQ is indicated for use by qualified and trained healthcare professionals to enable diagnostic ultrasound imaging and measurement of anatomical structures and fluids of adult and pediatric patients for clinical applications, including the following:

- Peripheral Vessel (including carotid and arterial studies)
- Procedural Guidance
- Small Organs (including thyroid)
- Cardiac
- Abdominal
- Urology
- Fetal/Obstetric
- Gynecological
- Musculoskeletal (conventional)
- Musculoskeletal (superficial)

The product can be used in a variety of settings such as clinics, hospitals, and clinical point of care centers for M-mode, B-mode, and Color Doppler functions.

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Exhibit C

HIPAA Business Associate Addendum

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) supplements and is made a part of the Master Terms and Conditions (the “Underlying Agreement”) by and between Client, (referred to herein as “Covered Entity”) and Butterfly Network, Inc., (referred to herein as “Business Associate”) and is effective as of the effective date of the Underlying Agreement (the “Effective Date”). Covered Entity and Business Associate may each be referred to herein as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, in connection with the Underlying Agreement, Covered Entity may disclose certain information to Business Associate constituting Protected Health Information (“PHI”);

WHEREAS, the Parties intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Underlying Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Health Information Technology for Economic and Clinical Health Act (collectively, “HIPAA”) and privacy and security regulations promulgated thereunder as amended from time to time (the “HIPAA Regulations”) and other applicable laws; and

WHEREAS, the purpose of this Agreement is to set forth the requirements necessary to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. Unless otherwise specified in this Agreement or the Underlying Agreement, all capitalized terms used herein shall have the meanings ascribed to them in the HIPAA Regulations.

B. Stated Purpose for which Business Associate May Use or Disclose PHI. The Parties hereby agree that except as otherwise limited in this Agreement, Business Associate shall be permitted to use or disclose PHI provided or made available from Covered Entity to perform any function, activity or service for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the HIPAA Regulations if done by Covered Entity.

C. Business Associate Obligations. Business Associate covenants and agrees that it shall:

(1) Not use or further disclose PHI other than as permitted or required under this Agreement or as required by applicable law or regulation.

(2) Implement the administrative, physical and technical safeguards set forth in 45 C.F.R § 164.302-318 and otherwise reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and to use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted under this Agreement.

(3) Use appropriate safeguards to maintain the security of and prevent unauthorized access to Covered Entity’s PHI. Such safeguards will include a written information security program.

(4) Require any of its agents or subcontractors, or other third parties with which Business Associate does business that are provided PHI or electronic PHI on behalf of Covered Entity, to agree, in writing, to adhere to substantially similar restrictions and conditions on the use and disclosure of PHI that apply to Business Associate under this Agreement.

(5) To the extent Business Associate maintains PHI in a Designated Record Set, make available to Covered Entity upon written request from Covered Entity, such information as is necessary to fulfill Covered Entity's obligations to provide PHI: (a) pursuant to an Individual's right to obtain a copy of his or her PHI under 45 C.F.R. § 164.524(a); or (b) that may be related to an Individual's right to amend his or her PHI under 45 C.F.R. § 164.526. Business associate will track disclosures of PHI as necessary to provide an accounting of disclosures pursuant to 45 C.F.R. § 164.528. In the event of a request by an individual directly to Business Associate for an accounting, Business Associate will inform Covered Entity and cooperate with Covered Entity so that Covered Entity may provide such an accounting in accordance with regulations and standards adopted by the Secretary of the U.S. Department of Health and Human Services (the "Secretary"). Business Associate shall also, as directed by Covered Entity, incorporate any amendments to PHI into copies of such PHI maintained by Business Associate.

(6) Make available to the Secretary all internal practices, books and records relating to the use and disclosure of PHI received from, or created by, Business Associate on behalf of Covered Entity, for purposes of determining Covered Entity's or Business Associate's compliance with the HIPAA Regulations. The Parties' respective rights and obligations under this Section C(6) shall survive termination of the Underlying Agreement.

(7) During the term of the Underlying Agreement, notify Covered Entity of any suspected or actual Breach of Unsecured PHI, Security Incident, or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Notice may be supplemented as facts become available and will include, to the extent known, the identification of each individual whose Unsecured PHI has been or is reasonably believed by Business Associate to have been accessed, acquired or disclosed during such Breach and other information necessary for Covered Entity to fulfill any Breach notification obligations. This Section C (7) constitutes notice to Covered Entity of unsuccessful Security Incidents, such as port scans, firewall pings and failed login attempts provided that such unsuccessful Security Incidents do not result in the unauthorized use or disclosure of PHI. Notice to Covered Entity otherwise will be provided in accordance with the Notice provisions of the Underlying Agreement.

(8) Disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary, in Business Associate's judgment, to perform or fulfill a specific function required or permitted by this Agreement.

D. Permitted Uses and Disclosures. Business Associate agrees that it shall not use or disclose PHI in any manner, form, or in any means that is contrary to its obligations under the Underlying Agreement or this Agreement. Notwithstanding the foregoing, the Parties agree that, pursuant to federal law, Business Associate may:

(1) Use PHI in its possession for its proper management and administration and to fulfill any of its present or future legal responsibilities provided that such uses are permitted under state and federal confidentiality laws.

(2) Disclose PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any of its present or future legal responsibilities

provided that (i) the disclosures are required by law, as provided for in 45 C.F.R. § 164.501, or (ii) Business Associate has received from the third party written assurances that the PHI will be held confidentially, that the PHI will only be used or further disclosed as required by law or for the purpose for which it was disclosed to the third party, and that the third party will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached, as required under 45 C.F.R. § 164.504(e)(4).

(3) Use PHI in its possession to provide data aggregation services relating to the health care operations of the Covered Entity.

(4) Use PHI in its possession to create de-identified data in accordance with the HIPAA Regulations. Business Associate may use such de-identified data for quality assurance, product improvement and other business purposes.

E. Termination. Notwithstanding any other provision under the Underlying Agreement and pursuant to federal law, Business Associate agrees that the Underlying Agreement may be terminated by Covered Entity should Covered Entity determine that Business Associate has violated a material term of this Agreement.

F. Return or Destruction of PHI. Upon termination, cancellation, or expiration of the Underlying Agreement, if feasible, and upon the request of Covered Entity, Business Associate shall return to Covered Entity or destroy in accordance with standards promulgated by the Secretary, any and all PHI received from, or created by, Business Associate on behalf of Covered Entity that is maintained by Business Associate in any form. Should the return or destruction of the PHI be determined by Business Associate, in its sole discretion, to be infeasible, the Parties agree that the terms of this Agreement shall extend to the PHI until otherwise indicated by Covered Entity, and any further use or disclosure of the PHI by Business Associate shall be limited to that purpose which renders the return or destruction of the PHI infeasible.

G. Amendment to Comply with Law. The Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Specifically, HITECH, as implemented by the HIPAA Omnibus Rule (78 Fed. Reg. 5566 (January 25, 2013)), imposes new requirements on business associates and covered entities with respect to privacy, security and breach notification. Applicable HIPAA and HITECH provisions, together with any guidance issued by the Secretary, and any applicable amendments to federal and state privacy law are hereby incorporated by reference and will become part of this Agreement as if set forth in their entirety, effective as of the applicable effective date/s.

H. No Third Party Beneficiaries. Nothing express or implied in the Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

I. Term. This Agreement shall become effective on the Agreement Effective Date and shall expire when all of the PHI provided by Covered Entity to Business Associate is destroyed or returned to Covered Entity pursuant to Section F. The Parties agree that Sections B, C, and D of the Agreement shall survive the termination or expiration of the Underlying Agreement.

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