

Universal Terms and Conditions

by and between:

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| --- | --- |
| (“Medisolv”) | (“Client”) |
| Medisolv, Inc. | [client name] |
| 10960 Grantchester Way, Suite 520 | [client address] |
| Columbia, MD 21045 | [client city state] |

Medisolv and Client enter into these Universal Terms and Conditions as of \_\_\_\_\_\_\_\_\_\_\_ (the "*Effective Date*").

Accepted by: Accepted by:

Client Medisolv, Inc.

Date Date

Signature Zahid Butt, CEO

Print Name and Title of Person Signing

By signing above, the parties agree to be bound by the following terms and conditions:

1. **Introduction**
	1. Medisolv, Inc. owns and operates an application platform (the “Platform”) that encompasses quality management and analytic tools and applicable services.  Client can order the provisioning of software and services from Medisolv (collectively, the “Services”) by entering into a Master Subscription Agreement or a similar written agreement with Medisolv that expressly incorporates by reference these Universal Terms and Conditions (such terms and conditions, these “Terms”, and together with one of the foregoing agreements, an “Agreement”), “Addendums”, and “Orders” are additional ordering documents that may be executed pursuant to an Agreement for the purchase of Services by Client (and which upon execution form part of such Agreement). These Terms shall remain in full force and effect for so long as any Agreement which incorporates by reference these Terms remains in effect.
2. **Definitions**
	1. “Acceptance Criteria” means the descriptions, standards, specifications, and criteria set forth in Section 15.
	2. “Affiliates” means any entity directly or indirectly controlled by, controlling, managed by, or under common control of Client (an entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise). All references to Client herein shall be deemed to include Affiliates.
	3. “Authorized Third Party” means any person or entity with whom Client has a business relationship, together with any other persons or entities that have a business relationship with the foregoing, and which (a) is not an Affiliate, and (b) is authorized by Client to use the System and Services.
	4. “Authorized Users” means any person authorized by Client, its Affiliates or Authorized Third Parties to access and use the System, Services and Documentation hereunder.
	5. "Client Data" means (i) the data, information, videos, audio recordings, images or other content uploaded to the Medisolv System or otherwise made available to Medisolv either by Client or by Authorized Users; (ii) any reports generated through Client’s or any Authorized Users use of the System and/or Services; and (ii) any other information, materials and tools provided or made available by Client or Authorized Users to Service Provider in connection with an Agreement.
	6. “Confidential Information” means information that is disclosed by one Party (<< not defined) to the other that the receiving Party knows is confidential to the disclosing Party or that is of such a nature that someone familiar with the type of business of the disclosing Party would reasonably understand is confidential to it. Without limitation, Confidential Information includes Client Data and information relating in any way to Client’s patients, and a disclosing Party’s financial and other business information, including the terms of an Agreement, as well as information relating in any way to a disclosing Party’s employees, trade secrets, vendors, finances, business plans, forecasts, projections or analyses, software, hardware or system designs, specifications, documentation, code, architecture, structure and protocols and other business and/or operational information. Notwithstanding the foregoing and except for any patient information or other information relating to an identified or identifiable natural person, alone or with reference to other information (which shall always be considered Confidential Information), Confidential Information does not include information that : (i) is in the public domain or is generally publicly known through no and prior to any improper action or inaction by the receiving Party; (ii) was rightfully in the receiving Party’s possession or known by it prior to its receipt from the disclosing Party; (iii) is rightfully disclosed without restriction to the receiving Party by a third party without violation of obligation to the disclosing Party; or (iv) is independently developed for the receiving Party by third parties without the use of or reliance on the Confidential Information of the disclosing Party.
	7. “Documentation” means user manuals, product specifications and any other documentation relating to the operation and functionality of the System or the Services, and any modifications or revisions thereof, provided that any such modifications and revisions do not adversely affect the material functionality of the System or Services.
	8. “Equipment” means the Service Provider-recommended minimum hardware configuration and operating environment (if any) necessary to use the System and access the Services, all as more fully set forth in an Agreement.
	9. “Host Computer System” means the servers, software, hardware and process infrastructure provided and hosted by Medisolv and/or its approved (in accordance with Section 7(4)) subcontractor, and by which users of the System upload and access Client Data by way of the Web Site.
	10. “Holidays” means New Year’s Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day.
	11. “Hosting Sites” means the physical locations of the primary hosting site and backup hosting site of the Host Computer System.
	12. “Order" means a document setting forth the additional units of Software/Services (concurrent users or other metric, as applicable), new modules, hardware and/or Professional Services to be provided by Medisolv to Client under the terms of an Agreement. Each Order shall expressly reference an Agreement, include a detailed Statement of Work (SOW) and its acceptance shall be evidenced by execution by both Parties. The Parties agree that upon the Effective Date of an Agreement, the initial purchase is set forth in that Agreement, is deemed to have been executed by both Parties and is subject to the terms of an Agreement (“Initial Order”). Each subsequent Order shall be an addendum to the Master Subscription Agreement. No term or condition contained in any Order that varies from or conflicts with any term of an Agreement shall apply unless it is specifically and expressly accepted in writing by an authorized representative of both Parties. Each Order is incorporated into an Agreement by this reference and deemed a part of that Agreement.
	13. “Professional Services” shall mean the installation, interfaces, configuration, and implementation of the System and Services, report templates configuration, training and/or other consulting services described in an Agreement, any Order and the applicable Statement of Work.
	14. “Services” means operating the System and necessary operating system software and utilities in the Host Computer System, providing the Support Services, storing and processing Client Data, and making the System and Client Data available to all Authorized Users of the System. The Services also include Medisolv’s proprietary content or data made available to Client and Authorized Users via the System.
	15. “Software” means the Medisolv cloud platform including software applications and any other software programs, interfaces or otherwise to be provided by Medisolv to Client pursuant to Agreement, as described in an Order, including all Upgrades thereto.
	16. “Statement of Work” means the plan and delineation of Professional Services and other requirements agreed upon by the Parties. Each Statement of Work (SOW) is set forth in each Order, if applicable, and incorporated herein by this reference.
	17. “Support Services” means the on-going maintenance, technical and customer support for the use and availability of System and Services during the term of an Agreement, subject to the terms and conditions for such services as described in Exhibit A.
	18. “System” means any hardware provided to Client by Medisolv, the Software, Host Computer System and all Documentation.
	19. “Upgrades” means any and all bug fixes and major and minor upgrades, updates, modifications, versions, releases and enhancements of the System, which shall include changes to the left and to the right of the decimal point (e.g., 3.0 to 3.1; 3.0 to 4.0).
	20. “Web Site” means the Internet site operated by Medisolv provided to Client as of an Agreement Effective Date, or any successor URL.
3. **Provision of Software and Services**
	1. *Services and Grant of License.* Service Provider agrees to provide the Services to Client in accordance with the terms of an Agreement and hereby grants to Client a non-exclusive and non-transferable (except as set forth in these Universal Terms and Conditions) right and license for Client, its Authorized Third Parties and their respective Authorized Users to access and use the System and Services and to create, upload, review and access Client Data through the Software and System, subject to the terms of an Agreement. Furthermore, Medisolv hereby grants Client a non-exclusive and non-transferable (except as set forth in an Agreement) license for Client and its Authorized Third Parties to use and reproduce and install the client-side components of the Software (if any) for use of the System and Services. Additionally, Medisolv may install a Client test environment that Medisolv or Client may use to test new functionality, Upgrades and troubleshoot the System.
	2. *Hosting Sites/Data Security Compliance.* Medisolv shall use a secure cloud infrastructure for hosting Client Data and the Hosting Sites shall not be located outside the United States (“off-shore”) unless approved by Client in writing within 30 days after notice by Medisolv to Client in writing given at least 60 days prior to the Medisolv’s proposed use of offshore Hosting Sites. Client may terminate an Agreement without penalty if any Hosting Site for Client Data is located offshore by Medisolv without Client approval and Medisolv does not cure such breach within thirty (30) days after written notice from Client. Medisolv shall at all times remain responsible for its obligations under an Agreement and for the Hosting Sites performance of any of the Services. Any delegation of the Services to or through the Hosting Sites does not relieve Medisolv of its responsibilities under the Agreement.
	3. *Use of Copies.* Client shall have the right, at no additional cost, to make and use additional copies of any Software user manuals or other documents prepared for Medisolv clients (which will be stored on a server) as reasonably necessary for support installation, testing, disaster recovery, and archival purposes. Client may duplicate the Documentation, at no additional charge, as necessary to satisfy Client’s internal requirements and Client agrees to retain all required proprietary markings on all duplicated copies.
	4. *Ownership.* Client owns all right, title and interest in, and retains the copyright and other intellectual property rights in all Client Data and all of its other Confidential Information. Medisolv’s Confidential Information and the Software and System with any and all future enhancements, upgrades and new functionality shall be and remain the property of Medisolv or third parties that have granted Medisolv the right to license the Software and System, and Client shall have no rights or interests therein except as set forth in an Agreement.
	5. Client shall not (a) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Software, in whole or in part, (b) copy, modify, or create derivative works or improvements of the Services or Software, (c) bypass or breach any security device or protection used by the Services or Software or access or use the Services or Software other than by an authorized user through the use of the authorized user’s then valid Access Credentials (as defined in 3.6), or (d) access or use the Services or Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Medisolv customer), or that violates any applicable law.
	6. Client shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of its data, including the uploading or other provision of Client Data for processing by the Services. Access Credentials means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the Services.
4. **Payment Terms**
	1. *Charges, Prices, and Fees.* Charges, prices, and annual subscription fees (“Charges”) for the System, Services, and Support Services shall be invoiced in accordance with the applicable fee schedule set forth in an applicable Agreement (each a “*Fee Schedule*”) and subsequent Orders (if any). All Charges are fixed for the term of any Order, except charges for approved change orders. Thereafter, if the Order renews, any increase in a Charge shall (i) not occur unless a minimum of twelve (12) months has elapsed since the effective date of the previously established Charge and (ii) not be less than the increase in the annual Consumer Price Index – All Urban Consumers, Washington-Baltimore from the date the previously established Charge was set to the date the new Charge will be set. Any portion of the Charges that is not paid when due will accrue interest at twelve percent (12%) per annum or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.
	2. *Taxes*. In the event that Client is a tax-exempt organization under the Internal Revenue Code and is exempt from certain taxes including, but not limited to, federal and state income taxes, state sales taxes, and federal excise taxes related to telecommunications services, Client shall provide Medisolv with tax exempt certificate.
	3. *Payment*. If an Agreement does not include billing and payment terms, then with respect to that Agreement (i) Medisolv shall invoice Client for all fees payable thereunder upon its execution, and (ii) Client shall pay all fees within 30 days of receipt of invoice. Client is responsible for providing complete and accurate billing and contact information to Medisolv and for notifying Medisolv of any changes to such information. Client must provide Medisolv with written notice of any dispute or disagreement with invoiced fees within 30 days of the date of the applicable invoice. Client will pay each invoice within thirty (30) days after Client’s receipt of such invoice.
5. **Warranties**
	1. *Medisolv’s Representations and Warranties*. Medisolv represents and warrants to Client that
		1. Medisolv shall cause the System and Services to be accessible to Client and conform in all material respects to the Acceptance Criteria and shall be compatible with the Equipment, as well as all hardware and software (both operating systems and application software) that, according to the Documentation, should be compatible with the System.
		2. Medisolv shall take commercially reasonable steps to provide that the System and Services do not contain any disabling code (defined as computer code designed to interfere with the normal operation of the System, Service or Client’s hardware or software) or any program routine, device or other undisclosed feature, including but not limited to, a “time bomb,” “virus,” “software lock,” “drop-dead device,” “malicious logic,” “worm,” “trojan horse,” or “trap door” which is designed to delete, disable, deactivate, interfere with or otherwise harm the System, Services, Client Data, or Client’s equipment or hardware or software (collectively, “Disabling Devices”). In the event the System and Services contain any Disabling Device, Service Provider shall, at Medisolv’s sole expense, promptly provide Client with the modifications, corrections, or enhancements to the noncompliant System Software or Services necessary to render such System, Software and/or Services in compliance with this representation and warranty. Medisolv will use commercially reasonable measures to screen all Systems and Services provided to Client hereunder, for the purpose of avoiding the introduction of any virus or other computer-software routine that is designed to: (a) permit access to or use of such software by unauthorized third parties; (b) disable or damage hardware, or damage, erase, or delay access to Client’s software, hardware or data; or (c) perform any similar actions;
		3. Medisolv is the sole owner or otherwise has the right and authority to provide the System, Services and Documentation to Client and its Authorized Third Parties, as set forth in an Agreement.
		4. the System, Services and Documentation and the use thereof do not and shall not infringe any copyright, trademark, patent or other proprietary right or misappropriate any trade secret.
		5. neither the execution of an applicable Agreement nor its performance will directly or indirectly violate or interfere with the terms of another agreement to which Medisolv is a party, nor will Medisolv enter into any agreement the execution or performance of which would violate or interfere with an applicable Agreement between Medisolv and the Client.
		6. each of Medisolv’s employees, agents or representatives assigned to perform hereunder (“Personnel”) shall have proper skill, training and background and shall perform in a competent and professional manner. Medisolv further warrants that the Services will conform to all applicable specifications and requirements set forth herein.
	2. *Conditions Precedent*. In the event of a warranty claim hereunder, Medisolv will bear no responsibility for correcting, curing, or otherwise remedying any nonconformity or defect in the Software to the extent that such nonconformity is caused by (i) malfunction of Client provided Equipment; (ii) misuse or unauthorized use of the Software or Services by Client; or (iii) damage to the Software caused by Client.
	3. *Non-Conformance*. If Medisolv is notified of a failure to conform to any of the warranties set forth in these Universal Terms and Conditions and such notice contains a reasonably detailed description of the warranty non-conformance and a request for appropriate modifications, corrections or enhancements to end the non-conformance, Medisolv shall have a reasonable period of time, not to exceed thirty (30) days from the date of said notification, to cure said failure at no cost to Client (“Warranty Cure Period”). If Medisolv does not cure said failure within the Warranty Cure Period, Client shall have the right to: (i) extend to Medisolv additional Warranty Cure Period(s); or (ii) terminate an applicable Agreement pursuant to Section 6(2), upon written notice to Medisolv and without further opportunity to cure, and Medisolv shall promptly refund to Client a pro rata portion of all pre-paid Charges and all sums paid by Client under an applicable Agreement, based on the then-remaining term for which such fee applies. Client’s election of “(i)” above shall not bar Client from electing “(ii)” above in the event Medisolv fails to correct all non-conformances.
6. **Term and Termination**
	1. *Term*. The applicable Agreement commences on the Effective Date and remains in effect until the last outstanding Order under the applicable Agreement is terminated.
	2. *Termination For Cause*. Either Party (<< not defined) may terminate an Order upon a default of an applicable Agreement by the other Party. A Party shall be deemed in default upon breach of any material obligation referred to in an Agreement and the continuation of such breach for a period of thirty (30) days after the breaching Party’s receipt of the non-breaching Party’s written notice thereof which shall specify the breach in reasonable detail.
	3. T*ermination Without Cause.* Either Party may terminate an Order for any reason upon written notice of termination to Medisolv at least sixty (60) days prior to such termination date.
	4. *Rights Upon Termination.* In the event of Termination Without Cause of an applicable Agreement, Medisolv shall not be required to issue any refunds. In the event of Termination For Cause of an applicable Agreement, Medisolv shall promptly refund to Client a pro rata portion of all pre-paid Charges paid by Client under the applicable Agreement, based on the then-remaining term for which such fee applies. Furthermore, each Party shall complete their obligations under Section 6(5) below.
	5. *Obligations Upon Termination.* At termination of this Agreement, Medisolv will provide the following termination assistance ("Termination Assistance"): (1) Medisolv will transfer one time to Client, all Client Data that includes Protected Health Information as defined in HIPAA (which is defined in Section 8(2) herein) (“PHI”) in the possession, custody or control of Medisolv within thirty (30) days of the notification of termination. Medisolv shall continue to retain and protect such Client Data as required by the applicable Agreement. For a period of up to one (1) calendar quarter, Medisolv will also cooperate and work in close consultation with Client to ensure the orderly transfer of the operations, with minimum disruption, to an alternative supplier selected by Client or in-house to Client. Client will pay Medisolv for services provided during the Termination Assistance period pursuant to the terms of an applicable Agreement (as may be pro-rated based on length of the Termination Assistance period and the structure of the Fee Schedule) and payments mutually agreed to in writing by the parties for the additional cost related to Termination Assistance. Subject to completion of each Party’s post-termination performance obligations, upon such Party’s request or as otherwise required by an applicable Agreement, the other Party will return (and/or render forensically unrecoverable and certify the same of such information upon request of other Party) the other Party’s Confidential Information, whether held by such Party or its affiliates assigns, contractors, employees, agents, or representatives.
7. **Additional Purchases, Professional Services & the Support Services.**
	1. *Additional Purchases.* If Client wishes to purchase additional units of Software/Services (concurrent users or other metric, as applicable), new modules, such additional purchases shall be set forth in an Order.
	2. *Professional Services*. In addition to the Professional Services identified in Exhibit A (below), Client may request Medisolv to provide additional Professional Services to Client pursuant to one or more Statements of Work in Orders. The fees for such additional Professional Services will be based on fixed fee or direct time and materials basis at the time charges/hourly rates Fee Schedule set forth in an Order, as agreed to. The Parties will execute an Order that references the applicable Agreement and reflects the additional Professional Services to be performed by Medisolv and the fees for such services. Medisolv is responsible for and shall ensure that all Medisolv personnel agents, subcontractors, and Hosting Sites are obligated to comply with the confidentiality provisions of these Universal Terms and Conditions.
	3. *Support Services.* As part of the Services hereunder, Medisolv shall provide, at no additional charge to Client, the Support Services for the System and Services during the term of the applicable Agreement, subject to the terms and conditions for such services as described herein and in Exhibit A (below) and incorporated herein by this reference.
	4. *Subcontracting Services.* Medisolv may subcontract its Professional Services, Support Services or other obligations under an Agreement; provided Medisolv shall remain responsible for the performance of all Services under that Agreement as if performed by Medisolv. Medisolv hereby agrees to be responsible for and to guarantee the performance of all Services performed by any subcontractor.
8. **Confidentiality/Data Security**
	1. *Confidential Information.* Each Party (<<not defined) acknowledges that the Confidential Information of a disclosing Party constitutes a valuable asset of such disclosing Party and that the Confidential Information is the sole and exclusive property of a disclosing Party. The receiving Party agrees to (i) maintain in confidence the Confidential Information of the disclosing Party with at least the same degree of care in which the receiving Party holds its own confidential and proprietary information, but at all times with no less than reasonable care; and (ii) use the Confidential Information only for the purposes of performing or receiving, as applicable, the Services and/or Professional Services pursuant to an Agreement. Neither Party will, at any time during the term of an Agreement and after termination thereof, disclose the Confidential Information of the other Party to any person other than as required to perform its obligations under an Agreement, unless such disclosure is required by an order of a tribunal of competent jurisdiction in connection with a legal action. In the event that Medisolv, or any of its respective affiliates, assigns, contractors, employees, agents, subcontractors, Hosting Sites, or representatives, is requested or required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of Client’s Confidential Information, it will provide Client with prompt written notice of any such request or requirement so that Client may seek either a protective order or other appropriate remedy or waive compliance with provisions of an Agreement. If, in the absence of a protective order or other remedy or the receipt of a valid waiver of the provisions of an Agreement, Medisolv (or any of its affiliates, assigns, contractors, employees, agents, subcontractors, Hosting Sites or representatives) is, in the written opinion of its legal counsel, legally compelled to disclose Confidential Information or else stand liable for contempt or suffer other censure or penalty, Medisolv, or any of Medisolv’s affiliates, assigns, contractors, employees, agents, subcontractors, Hosting Sites, or representative(s) may, without liability hereunder, disclose only that portion of the Client Confidential Information which such counsel advises is legally required to be disclosed, provided that it exercises its commercially reasonable efforts to preserve the confidentiality of the Client Confidential Information including, without limitation, cooperating with Client, at Client’s expense, to obtain an appropriate protective order or other reliable assurance that the Confidential Information will be accorded treatment as confidential information. Notwithstanding the foregoing, Client may disclose the System, Services, and Documentation to its employees, medical staff, contractors, subcontractors and agents of Client and its Authorized Third Parties with a need to access the same in the course of performing their respective job functions. Medisolv is responsible for and shall ensure that all Medisolv personnel agents, subcontractors, and Hosting Sites are obligated to comply with the confidentiality provisions of these Universal Terms and Conditions.
	2. *Treatment of PHI*. All PHI containing health records, and personal information are and will remain under the ownership of Client and will be held in strictest confidence in accordance with applicable law, including the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Electronic and Clinical Health Act and their implementing regulations collectively referred to herein as “HIPAA”. The Parties acknowledge that Medisolv is a Business Associate pursuant to HIPAA, and the use and disclosure of PHI containing health records and personal information will be controlled by a Business Associate Agreement which is signed by both parties separately.
	3. Medisolv acknowledges that it will not acquire any rights to any of the Client’s data except for use by Medisolv in aggregate statistical analyses or use in “cleansed” or “de-identified” form, for the purpose of comparative benchmarking across its client base (Client data includes patient information or information that relates to patient information).
9. **Replacement of Software**
	1. If a third party claim of infringement results in Client being unable to use the System, Services, Professional Services, or Documentation or for their use to be materially disrupted, Medisolv shall promptly, without additional charge to Client: (a) procure for Client the right to continue to use the infringing System, Services, Professional Services, or Documentation, (b) replace or modify the same to make its use non-infringing while be capable of performing the same function without degradation of performance, or (c) if none of the foregoing alternatives are possible even after Medisolv's commercially reasonable efforts, then Client shall have the right to terminate the applicable Agreement, upon written notice and without further opportunity to cure, and Medisolv shall promptly refund to Client all pro-rated remaining sums prepaid by Client under the applicable Agreement.
10. **Insurance**
	1. Medisolv shall maintain insurance coverage with reputable carriers and in the amounts set forth below. Medisolv shall furnish certificates of insurance upon Client request.
		1. commercial general liability insurance, including products/completed operations, personal and advertising injury coverage, with a combined single limit of $1 million per occurrence and general aggregate and products/completed operations aggregate limits of $2 million;
		2. combined single limit of $1 million per accident for bodily injury and property damage liability;
		3. worker's compensation insurance or any alternative plan or coverage as permitted or required by applicable law; and
		4. E&O/Cyber with a limit of $5,000,000.
11. **Indemnity**
	1. Each Party (an “Indemnifying Party”) agrees to indemnify, defend, and hold the other Party and the other Party’s officers, directors, agents, and employees (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) harmless from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (collectively “Claims”), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered or incurred by, accrued against, charged to, or recoverable from, any Indemnified Party, by reason of any Claim arising out of or relating to any act, error or omission, or misconduct of the Indemnifying Party, its officers, directors, agents, employees, and subcontractors, during the performance of an applicable Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) violation of any law or regulation; (c) in the case of Medisolv, a Claim that the Services infringes or misappropriates any patent, copyright, trade secret, trademark, or other proprietary right (d) breaches of any representations, warranties or covenants made under these Universal Terms and Conditions; or (e) the Business Associate Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim results from the gross negligence or intentional misconduct of the Indemnified Party, its officers, directors, agents, or employees.
12. **Limitation of Liability**
	1. NEITHER PARTY HERETO SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF THE ACTION OR LEGAL THEORY (WHETHER BREACH OF CONTRACT, NEGLIGENCE, TORT OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
	2. NEITHER PARTY HERETO SHALL BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THE APPLICABLE AGREEMENT OR UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE OF ONE MULTIPLIED BY THE SUM OF THE FEES PAID AND PAYABLE BY CLIENT TO MEDISOLV UNDER THE APPLICABLE AGREEMENT, INCLUDING WITHOUT LIMITATION, AMOUNTS UNDER ORDERS EXECUTED BY THE PARTIESBUT NOT YET PAID.
13. **Government Requirements**
	1. Omnibus Reconciliation Act of 1980. To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the “Act”) and the regulations promulgated thereunder are applicable to the applicable Agreement, Medisolv and the organizations related to it, if any, performing any of the duties pursuant to the applicable Agreement valued at Ten Thousand Dollars ($10,000) or more in any twelve (12)-month period shall, until four (4) years after the furnishing of Services pursuant to the applicable Agreement, comply with requests by the Comptroller General, the Secretary of the Department of Health and Human Services, and their duly authorized representatives for access (in accordance with Section 952 of the Act) to any contractor agreement between Medisolv and Client for Services and to any contract or agreement between Medisolv and such related organizations, as well as the books, documents and records of Medisolv and its related organizations, if any, which are necessary to verify the cost of the Services provided. Medisolv shall promptly advise Client of such request and shall promptly provide to Client copies of any documents so provided. Neither party shall be deemed to have waived any attorney-client or work-product privilege by virtue of this Section.
	2. Exclusion from Federal Healthcare Programs. Medisolv represents and warrants that neither it, nor any of its employees or other contracted staff (collectively referred to in this paragraph as “employees”) has been or is about to be excluded from participation in any Federal Health Care Program (as defined herein). Medisolv agrees to notify Client within five (5) business days of Medisolv's receipt of notice of intent to exclude or actual notice of exclusion from any such program. The listing of Medisolv or any of its employees on the Office of Inspector General’s exclusion list (OIG website), the General Services Administration’s Lists of Parties Excluded from Federal Procurement and Non-procurement Programs (GSA website) for excluded individuals or entities, any state Medicaid exclusion list, or the Office of Foreign Assets Control’s (OFAC’s) blocked list shall constitute “exclusion” for purposes of this paragraph. In the event that Medisolv or any of its employees is excluded from any Federal Health Care Program or placed on the OFAC’s blocked list, it shall be a material breach of an Agreement, and that Agreement shall terminate without penalty to Client, unless Client elects in writing to continue that Agreement. For the purpose of this paragraph, the term “Federal Health Care Program” means the Medicare program, the Medicaid program, TRICARE, any health care program of the Department of Veterans Affairs, the Maternal and Child Health Services Block Grant program, any state social services block grant program, any state children’s health insurance program, or any similar program.
14. **Export Restrictions**
	1. Any applicable Agreement is expressly made subject to any applicable laws, regulations, orders, or other restrictions on the export of the technology or the Software which may be imposed from time to time. Client shall not export the Software, information about the Software or any product containing the Software without complying with such laws, regulations, orders, or other restrictions. The Software shall not be exported or re-exported (i) to Cuba, Iran, Iraq, North Korea, Rwanda, Sudan and Syria and any and all other persons and entities prohibited under the United States Export Administration Regulations, as amended from time to time, nor (ii) to any person or entity on the United States Department of the Treasury’s Office of Foreign Asset Control’s Sanctions Programs, including without limitation, the list of Specially Designated Nationals and Blocked Persons, as amended from time to time.
15. **Implementation of Medisolv Software; Support Services**
	1. *Implementation*. Medisolv shall be responsible for implementing the Medisolv Software in accordance with the dates and/or time limits in the applicable Agreement.
		1. On the installation date for the Software, Medisolv shall certify in writing to Client that the Software is ready for Acceptance Testing. With Medisolv’s assistance, Client shall, within thirty (30) calendar days after receipt of such certification, conduct Acceptance Testing, which may include full-stress testing to determine whether, in Client’s commercially reasonable judgment, the Software meets the documentation specifications, provides the functionality and performance characteristics described in the documentation, and otherwise performs in accordance with the documentation and as stated elsewhere in an Agreement; (“Acceptance Tests”).
		2. Upon successful completion of the Acceptance Tests, Client shall so notify Medisolv in writing within five (5) business days and the Software shall be deemed to be accepted (“Acceptance”). In such case, the acceptance date shall be the date that the Software satisfactorily completes all of the tests specified above (“Acceptance Date”). Notwithstanding any other provision contained in an Agreement, no warranty period of the Software shall begin until the Acceptance Date.  If Client fails to so notify Medisolv within five (5) business days, then the Software shall be automatically deemed accepted on the date that such tests were satisfactorily completed.
		3. If the Software fails to meet the specified Acceptance Tests, Client shall notify Medisolv of such failure in writing and Medisolv shall have fifteen (15) business days in which to correct, modify, or improve the Software to cause it to meet each Acceptance Test. Thereafter, Client shall have ten (10) additional business days in which to repeat all of the Acceptance Tests as needed. This process shall be repeated as may be necessary until the Software meets the Acceptance Tests; provided, however, that if the Software does not achieve Acceptance hereunder within one hundred twenty (120) calendar days after Medisolv’s initial written certification to Client that the Software is ready for Acceptance Testing, then Client shall have the right and option to: (i) cancel the associated Agreement and receive a full reimbursement of all fees paid by Client hereunder from Medisolv, to be paid within thirty (30) days; and/or (ii) extend the Acceptance Testing subject to Client’s right to cancel and obtain reimbursements if the Software is not repaired within such extension period. Software which must be accepted in stages shall not be finally accepted until final acceptance of the Software as a whole.
	2. *Training*. Medisolv will provide the Client a comprehensive Implementation process, which includes extensive data validation and end-user training to ensure accurate and efficient use of the software. Medisolv will provide resources and documentation on the proper use of Medisolv Software functionality and tools for quality improvement. Medisolv will provide a dedicated Medisolv Clinical Quality Advisor during Implementation and throughout the term of the applicable agreement. Written documents that list steps, timelines, and best practice workflows and other requirements for success will be produced and shared with all included facilities covered under the applicable agreement. End-user training either on-site or at Medisolv’s training facility not included in the Subscription Fees.
	3. *Support Services.* Medisolv will provide the Support Services as part of Client’s subscription to the Software. See Exhibit A.
	4. *Service Availability.* Software provided under an Agreement shall be available with a minimum uptime threshold of 97%, excluding scheduled maintenance windows. See Exhibit A.
16. **Backup and Recovery of Data**
	1. Medisolv will perform regular backups, for the purposes of disaster recovery, business continuity, and safety purposes. Backups will include full database backups, transaction log backups, and file-storage (e.g. BLOB) backups as necessary based on subscribed application(s). Backups and recovery are measured and enforced via RTO/RPO metrics, and Medisolv enforces the following minimum metric thresholds:
		1. RPO (Recovery Point Objective): 24 hours (physical hours)
		2. RTO (Recovery Time Objective): 40 hours (business hours)
	2. Disaster recovery is tested on an annual basis and consists of the ability of Medisolv to restore Client Data (based on RPO) to a separate system (either new installation within existing infrastructure environment, or new installation within equivalent infrastructure environment in physically separate location) within the allotted time (based on RTO).
	3. Medisolv will ensure that there is sufficient business continuity and disaster recovery processes in place to mitigate the risk to Client in the event of a total failure of the Services. Medisolv will have sufficient training for their employees to ensure they are able to quickly recognize the occurrence and respond. Medisolv will ensure that there is adequate staff on hand to respond to such an event in an immediate fashion and will ensure that the staff is aware of, and complies with, Medisolv's full security and escalation procedures.
17. **Functional Requirements**
	1. Supplier supports FSSO (Federated Single-Sign-On) using SAML 2.0, which allows the Client's identity provider and MFA routines to be used during authentication, giving control of identity management fully to the Client.
18. **Miscellaneous**
	1. *Assignment.* Except as stated in an Agreement, neither Party may assign, voluntarily, by operation of law or otherwise, any rights or delegate any duties under the applicable Agreement without the other Party’s prior written consent, except in the case of a merger, change of control acquisition, or sale of all, or substantially all, of the assets of the Party, subject to the successor entity expressly assuming the obligations of the assigning Party. The applicable Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.
	2. *Modification to Agreement.* These Universal Terms and Conditions and the applicable Agreement may not be modified or altered except in writing by an instrument duly executed by authorized officers of both parties.
		1. *Notices.* All notices given by Medisolv and Client under an Agreement shall be in writing and shall be deemed given: (a) when personally delivered to the person identified in the here, or (b) when received by the person identified here if sent via a nationally recognized overnight courier, to the address set forth below. Either Party may change its address for the giving of notice by so notifying the other Party by written notice given in the manner set forth in this Section. (<< Doesn't mention email. Can it?)

		For Medisolv:
		Attn: Zahid Butt, CEO
		Medisolv, Inc.
		10960 Grantchester Way
		Suite 520
		Columbia, MD 21044

		For Client:
		See applicable Agreement
	3. *Non-Waiver/Severability.* A waiver by either Party of any term or condition of these Universal Terms and Conditions or an applicable Agreement shall not be deemed or construed as a waiver of such term or condition in the future, or of any subsequent breach thereof, whether of the same or of a different nature. If any provision of these Universal Terms and Conditions or an Agreement is held to be invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.
	4. *Section Headings*. The section headings used in these Universal Terms and Conditions are for convenience only and shall not be considered in construing the terms of the applicable Agreement.
	5. *Force Majeure.* For a maximum period of thirty (30) days, Medisolv shall not be responsible for the non-performance of its obligations under the applicable Agreement if such non-performance is caused by forces beyond its control, including but not limited to, by acts of God, strikes, acts of civil or military authority, civil disturbance, war, declarations of national or state emergencies or fires. Medisolv shall give notice to the Client and shall make commercially reasonably efforts to resume performance. If the period of non-performance exceeds thirty (30) days from the receipt of notice of the force majeure event, the Client may terminate the applicable Agreement upon written notice and shall receive a refund of all pro-rated remaining sums prepaid by Client under the Agreement.
	6. *Survival*. Any provision of the applicable Agreement which imposes an obligation after termination or expiration of that Agreement shall survive the termination or expiration of the applicable Agreement.
	7. *Governing Law.* The applicable Agreement is made and performed in Maryland, and is governed by Maryland law, however, no Maryland conflicts-of-laws or choice-of-laws provisions apply to an Agreement, and to the extent that the substantive and procedural law of the United States would apply to the Agreement it supersedes the application of Maryland law. The Parties agree that for any legal action arising out of or related to an Agreement, they submit to the exclusive jurisdiction of the State of Maryland and to the exclusive forum and venue of the courts of the State of Maryland in Howard County, or if federal jurisdiction exists, the United States District Court for the District of Maryland.
	8. *Entire Agreement.* These Universal Terms and Conditions, the applicable Agreement, the exhibits hereto and all documents incorporated by reference, constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all other understandings or representations, oral or written, between the parties concerning the subject matter hereof.
	9. *Counterparts*. The applicable Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that an electronic PDF signature may substitute for and have the same legal effect as the original signature.
	10. *Use of Name, Trademarks and Advertising.* Medisolv shall not make any written use of reference to Client’s name, trademark and/or logo for any marketing, public relations, advertising, display, or other business purpose without the prior written consent of Client, which consent may be withheld or granted in Client’s sole and absolute discretion.

**Exhibit A**

**SUPPORT SERVICES & SERVICE LEVEL COMMITMENTS**

Support Services shall not be linked to usage or license rights for the System or Services. Medisolv shall maintain the System and Services so that it performs in accordance with the Acceptance Criteria. Medisolv shall provide Support Services as follows:

1. Support Services shall include:
	1. Standard Telephone and E-mail Support. Medisolv shall provide Client technical assistance by telephone and e-mail with the installation and use of the System and Services. Telephone support is available during business hours from 8 AM EST to 5 PM Eastern Standard Time (EST), five (5) days a week, Monday through Friday, excluding all Holidays (Section 1(10)). Medisolv provides a toll-free support line accessible anywhere in the United States and Canada. The toll-free number will be provided to Client. Support calls will be answered directly by a Medisolv Clinical Quality Advisor.
	2. All Upgrades to the System and Services.
	3. Incident Resolution as described in Section 2 below.
2. Incident Resolution Service Levels
	1. "Incident” means (i) a failure of the System and/or Services to conform in all material respects to the Acceptance Criteria and the standards set forth in these Universal Terms and Conditions, (ii) if applicable, failure of the Medisolv’s hardware to be in good working order or free from material defects in material and workmanship; or (iii) failures or malfunctions in the System and/or Services that produce incorrect or unexpected results, or cause the System and/or Services to operate in unintended ways.
	2. “Incident Resolution” means a modification or addition that, when made or added to the non-conforming System and/or Services brings the operation of System and Services into conformance with the Acceptance Criteria, the Documentation and the standards set forth in these Universal Terms and Conditions.
	3. *Incident Resolution.* Client shall promptly notify Medisolv of any Incidents in the System or Services, to permit Medisolv to resolve such Incidents in accordance with the terms hereunder. Medisolv will initiate remote diagnosis and troubleshooting within the targeted incident response time period pursuant to the chart below.
	4. Medisolv’s target response within the hours of 8 AM EST and 5 PM EST, depending on the severity level of the Incident (the severity levels being Severity Levels 1-5 as defined below), will be as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Severity Level** | **Examples of each Severity Level** | **Incident Response Time** (Time after incident identified before response received) | **Incident Resolution Time** (Time permitted to resolve incident or provide acceptable workaround from time initial response received) |
| **Severity 1** | * Complete shutdown of all Software functions
* Access to one or more Software functions not available
* Client’s business impacted
 | Within 30 minutes of initial notification of incident. | < 6 hours |
| **Severity 2** | * Major subset of Software application impacted
* Client’s business impacted
 | Within 4 hours of initial notification of incident | Within same business day |
| **Severity 3** | * Minor subsystem failure
* Data entry or access impaired on a limited basis
 | Within same business day of initial notification of incident | Within 2 business days |
| **Severity 4** | * System is operating with minor issues
* Have work-around in place
 | Within same business day of initial notification of incident | Within 1 week |
| **Severity 5** | * New System Enhancement
 | Quarterly Schedule | Within 2 weeks |

* 1. When notifying Medisolv of an Incident, Client will identify the severity level of the Incident and Medisolv will correct Incidents as stated above. Medisolv may provide resolution of an Incident by means of a workaround consisting of sufficient programming and operating instructions to implement such Incident Resolution, provided Medisolv supplies a fix within a reasonable period of time and the workaround is reasonable and does not unduly burden Client or its operations.
	2. During the Incident Resolution process, time taken by Client to respond to Service Provider shall not be counted in the Incident Resolution time frame.
1. Service Level Requirements
	1. Medisolv agrees to achieve an Uptime Percentage, as defined below, of at least 97%, during each Period of Measurement. The period of time over which Uptime Percentage will be calculated is quarterly beginning on Acceptance and thereafter throughout the term of an Agreement (“Period of Measurement”).
	2. The “Hours of Operation” are the hours the System and Services are to be made available to Client, which the parties agree shall be twenty-four hours a day, seven days a week, including Holidays. Based on the foregoing, the total Hours of Operation for each Period of Measurement will be 24 hours times the number of days in one calendar quarter.
	3. The “Uptime Percentage” is the percentage of hours the System/Services are operable and accessible to Client during the Hours of Operation, excluding periods of inoperability or inaccessibility due to scheduled maintenance (as set forth in Section 4 below) and periods of inoperability or inaccessibility to the extent caused by Client’s misuse of the System or Services including untimely and incorrect uploading of Client data to the Medisolv Platform. The Services are considered inoperable and/or inaccessible if a major function or functions of the System or Services are not accessible or do not function in accordance with the Acceptance Criteria and the standards set forth in these Universal Terms and Conditions and an applicable Agreement. The Services are considered inoperable and/or inaccessible for an entire hour if there are one or more instances of inoperability or inaccessibility during such hour.
	4. *Force majeure.* Notwithstanding the Uptime Percentage requirements agreed to above, any inoperability or inaccessibility due to extraordinary events or circumstances beyond the control of Medisolv, including, but not limited to, war, strike, riot, crime, epidemic, system failure of Microsoft Azure platform and sudden legal changes is explicitly excluded in determining whether the Uptime Percentage requirement has been satisfied.
	5. *Remedies*. For each quarter in which Medisolv fails to meet uptime commitment identified in Section 3(1) above, it shall provide a credit to Client equal to ten percent (10%) of the hosting fees payable for such quarter. Any credits shall be reflected on the next invoice issued pursuant to this Agreement; provided, however, that in the event that no more invoices are expected (e.g., imminent or intervening expiration or termination of the applicable Agreement), or if the next invoice is not scheduled for more than three months, Medisolv shall provide a refund to Client equal to the amount of all of the credit(s) that have accrued to that point and otherwise would have been provided.
	6. *Credits*. Any amounts due from Medisolv may be applied by Client against any fees due to Medisolv. Any such amounts that are not so applied shall be paid to Client by Medisolv within forty-five (45) days following Client's request.
2. Scheduled Uptime Maintenance and Notifications
	1. *Notification of Scheduled Maintenance.* Medisolv will notify Client of any scheduled maintenance, or of any scheduled maintenance which will occur outside of the Scheduled Maintenance Hours outlined in Section 4(1). Notification will be provided at least seven (7) days prior to such scheduled maintenance. In cases of emergency, Medisolv will use its best efforts to notify Client of any downtime as soon as practicable.
	2. *Scheduled Maintenance and Service Levels.* Provided scheduled maintenance occurs within the timeframe set forth in Section 4(1) above and does not exceed the total number of hours set forth in Section 4(2) above, such scheduled maintenance shall not count against the Uptime Percentage.
	3. *Scheduled Maintenance Hours.* Scheduled maintenance shall occur between the hours of 8:00 PM and 4:00 AM Eastern Standard Time, in accordance with Medisolv's release schedule, based on both internal timelines and regulatory requirements.
3. Terms of Support
	1. *Employee Conduct.* Medisolv acknowledges Client's obligations to comply with certain laws and regulations as well as the need for Medisolv employees and agents to comply with reasonable requests, standard rules, and regulations of Client regarding personal and professional conduct (including the use of an identification badge or personal protective equipment and the adherence to health care facility laws or regulations, including in some instances, criminal background checks, credit checks, health screening, vaccinations and testing, and general safety practices or procedures) generally applicable to such facilities. Medisolv shall provide Client with reasonable assistance in ensuring Medisolv employees and agents comply with (i) laws and regulations affecting Client's facility and (ii) Client's facility rules and regulations. Medisolv warrants and represents that it has enforceable written agreements with all of its employees and permitted subcontractors involved during the course of the Agreement in any project under the Agreement, obligating such employees and permitted subcontractors upon terms and conditions no less restrictive than contained herein, not to use or disclose any Confidential Information, proprietary rights, or information learned or acquired during the course of such employment or engagement. To the extent Medisolv's subcontractor has access to Protected Health Information as such is defined in HIPAA (which is defined in Section 8(2) herein), Medisolv shall cause such subcontractor to execute a written agreement with Medisolv which obligates any such subcontractor to protect the Confidential Information of Client.
	2. *Remote Access.* Remote access to any of Client's systems for maintenance and support of Licensed Software and for any other purpose allowed by an applicable Agreement is subject to compliance with the Client's remote access and other security requirements. Medisolv's access may require prior certification by Client that Medisolv complies with Client's security policies and standards. Client may modify these security requirements and Medisolv must comply with the most recent version of Client's security requirements. Medisolv must ensure that each of its personnel having access to any part of Client's computer system: (i) is assigned a separate log-in ID by Client and uses only that ID when logging on Client's system; (ii) logs-off Client's system immediately upon completion of each session of service; (iii) does not allow other individuals to access Client's computer system; and (iv) keeps strictly confidential the log-in ID and all other information that enables access. Medisolv must promptly notify Client upon termination of employment or reassignment of any of its personnel with access to Client's computer system. If Client revises the requirements for access to its computer system, then Client must notify Medisolv of the changed or additional requirements and Medisolv must comply with them as a prerequisite to further access. Client may require each individual who is to be allowed access to Client's computer system to acknowledge the individual's responsibilities in connection with the access.