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# SUBSCRIPTION SOFTWARE LICENSE AGREEMENT

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This Subscription Software License Agreement (“Agreement”) is made effective as of the acceptance date indicated on the Customer Purchase Schedule (“Effective Date”) executed by the purchasing party named and with the address therein (“Licensee”) and One Team Care, LLC DBA TRIARQ-OneTeam Care, a Michigan corporation whose address is 424 E. 4th Street, Suite 300, Royal Oak, MI 48067 (“TRIARQ”), Telephone: 877-456-3671, Fax: 248-283-8646, Email: [info@triarghealth.com](mailto:info@triarghealth.com).

Intending to be legally bound, Licensee and TRIARQ agree to the terms and conditions stated in this Agreement, including its Schedules and any exhibits, addenda, appendices or amendments which are hereby incorporated herein (collectively, the “Agreement”).

The parties hereby agree to the terms and conditions of this Agreement as of the Effective Date.

## DEFINITIONS

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1.1 “Affiliated Provider” shall mean Provider or Mid-Level Provider that works in cooperation with Licensee, but is not an employee of Licensee and who Licensee wishes to be an Authorized User or Provider as defined in this Agreement. “Authorized User” shall mean any Provider, Mid-Level Provider, Affiliated Provider and any third-party described in Section 2.3E, who has been properly authorized to access and use the Software by Licensee.

1.2 “Customer” shall mean the Licensee named herein

1.3 “Documentation” shall mean all manuals, handbooks, training materials, or other written materials in any form or media, including electronic, which is packaged or delivered with the Software.

1.4 “Intellectual Property” shall mean any patent, copyright, trademark, trade secret, and other intellectual and intangible property rights, including all common law rights and all applications now existing and/or existing in the future and all current and future registrations, including all continuations, continuations in part, divisional applications, and renewals of any of the foregoing.

1.5 “Implementation” shall mean training services for use of the Software provided by TRIARQ.

1.6 “Subscription Fee” means the amount indicated on the TRIARQ Purchase Schedule. The Software is licensed on a per Provider subscription basis or Included in the QPro and QComplete Services.

1.7 “Maintenance” includes the periodic release of software patches, bug fixes, and software enhancements.

1.8 “Provider” shall mean an individual who is licensed to practice medicine and who possesses a DEA number and/or can perform healthcare-related billable services to Medicare or Commercial Healthcare Insurance payers and who are identified on the Purchase Schedule. This primarily includes, but is not limited to, licensed Medical Doctors (M.D.) and Doctors of Osteopathic medicine (D.O.).

1.9 “Mid-Level Provider” shall mean a licensed healthcare professional other than Provider who provides billable services to patients and is identified on Schedule D of this Agreement. This includes, but is not limited to, Physician Assistants, Licensed Nurse Practitioners, and Physical Therapists.

1.10 “Purchase Schedule” shall mean the TRIARQ Purchase Schedule and Agreement which is the order document that shall initially accompany this Agreement and/or which is subsequently added hereto by consent of the parties. The Purchase Schedule identifies the specific Software and Maintenance and Support Services, including Value Added Options, to be provided under this Agreement and any related Support or Services agreement.

1.11 “Support” shall mean telephone, web portal, remote or on-site software support provided by TRIARQ.

1.12 “Software” means TRIARQ’s proprietary software products known as gloEMR™, Q EMR, gloPM™, Q PM, gloSuite™, Q Suite and all software modules listed on the TRIARQ website found at [www.TRIARQhealth.com](http://www.TRIARQhealth.com) and/or developed or licensed by TRIARQ, including all enhancements, modifications, updates, upgrades, releases and extensions and all Documentation relating thereto which is provided to Licensee pursuant to this Agreement.

1.13 “Subscription Based Services” means services billed to Licensee on a monthly basis.

## LICENSE AND SOFTWARE USE

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2.1 License Grant. TRIARQ hereby grants to Licensee a limited, nonexclusive, nontransferable, nonsublicensable, terminable subscription-based license, conditioned upon compliance with the terms of this Agreement, to use the executable object code version of the Software purchased by Licensee as specified on a Purchase Schedule only for Licensee’s own internal business purposes limited to Authorized Users for whom Licensee is paying ongoing Subscription Fees for, only to the extent provided herein. Licensee is responsible for maintaining compliance with the terms of this Agreement with all Providers, Affiliated Providers, Mid-Level Providers, and any Authorized Users accessing the Software.

2.2 Documentation. Licensee may distribute the Documentation to Authorized Users only.

2.3 Licensee May

- A. Use the Software for Licensee’s own business subject to the limitations on the number of Licensee’s Authorized Users identified on the Purchase Schedule.
- B. Permit third parties (including Affiliated Providers) to use the Software on Licensee’s behalf solely for Licensee’s business if such third parties agree in writing to comply with the terms and conditions of this Agreement. Licensee will remain responsible for the compliance with these terms by such third parties using the Software.

2.4 Licensee May Not:

- A. License, sell, or lease the Software to, or permit the use of the Software by or for the benefit of, any third party except as allowed under section 2.4E.
- B. Modify the Software or any part thereof.
- C. Reverse engineer, decompile, or disassemble the Software under any circumstances.
- D. Copy any part of the Software unless this Agreement permits it.
- E. Remove or destroy any proprietary markings or legends, including copyright and trademark notices, appearing on or contained within any Software.

2.5 Other Purposes/Uses. If Licensee wishes to use Software for purposes that exceed the restrictions set forth in this Agreement, Licensee must contact TRIARQ and additional license(s) and/or fee(s) may be required.

## SUPPORT AND MAINTENANCE

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3.1 Implementation Services. Implementation is governed by a separate agreement.

3.2 Maintenance and Support Services. If Licensee pays the Subscription Fee, or it is included in Q Pro or Q Complete and Licensee is not in breach of this Agreement, TRIARQ will provide Software Maintenance and Support to Licensee in accordance with the description of such services as set forth in this Agreement.

## FEES AND PAYMENT

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4.1 The Subscription Fee for the use of the software is allocable only to the use of the Software and included Services, if any, as provided herein and as set forth in the Purchase Schedule. The Subscription Fee applies to all participating Providers listed on the Purchase Schedule.

4.2 The Maintenance and Support Fee shall be included in the monthly Subscription Fee of the Software as identified on the Purchase Schedule. The Maintenance Fee is allocable only to the provision of Maintenance Services as set forth in Schedule B and does not include any customization of the Software.

4.3 TRIARQ will provide Maintenance only if Licensee is current with respect to all fees owed to TRIARQ. Notwithstanding the forgoing, any and all third-party costs, including those for any current and/or future additional third-party software required to maintain compatibility and/or maintain use of the Software are expressly excluded and will be the sole responsibility of Licensee.

4.4 All fees paid hereunder are non-refundable unless otherwise expressly provided herein.

- 4.5 In the event Licensee's account is in arrears for more than twenty (20) days for any reason, TRIARQ shall be entitled to immediately place Licensee on support hold and/or TRIARQ shall have the right to suspend, disable, modify, and/or remove the Software, third-party services, and/or any of the Software modules or components.
- 4.5 No Support or Maintenance will be provided while Licensee is on support hold, and the Licensee's right to use the Software is suspended, although Subscription Fees and other fees for the Software and services shall continue to accrue.
- 4.6 TRIARQ retains the right to increase Subscription Fees and fees for services with 60 days notice.
- 4.7 TRIARQ may choose at anytime to cease its Maintenance of the Software, a particular version of the Software or a module of the Software. If such occurs during the term of Licensee's Maintenance Services, TRIARQ shall refund to Licensee a prorated portion of the Maintenance Fee paid for that term.
- 4.8 All invoices are due and payable in US dollars upon receipt by Licensee. Late payment charges will be imposed as outlined in 4.13.
- 4.9 All fees listed in this Agreement are exclusive of all sales, use, value-added and similar taxes, fees, levies and assessments that may be imposed by any and all federal, state, or local laws and agencies. Licensee agrees to be solely responsible for the payment of all such taxes, fees, levies and assessments imposed on Licensee or TRIARQ arising out of this Agreement, excluding any tax based on TRIARQ's net income.
- 4.10 Licensee acknowledges that the Fees under this Agreement do not include any third party or additional services not directly provided by TRIARQ, including but not limited to any current or future third party additional services with which the Software communicates including but not limited to electronic prescription, electronic communications, billing validation, claims processing and/or insurance company services for which Licensee shall be solely responsible.
- 4.11 All Software updates delivered to Licensee shall be delivered via Electronic Software Delivery ("ESD"). TRIARQ shall use commercially reasonable efforts to secure all file transfers via ESD. Licensee acknowledges and accepts that, despite such efforts by TRIARQ to effect a secure file transfer, including using a non-public server and transferring by appointment only, there remains some level of risk of invasive activity by third parties.
- 4.12 In consideration for the use of certain TRIARQ Services and applicable Software Subscription licenses, TRIARQ will be paid fees as set forth in the applicable Purchase Schedule, plus applicable sales tax, if any. Customer agrees to pay TRIARQ, or its assignee ("Payment Assignee"), the payments as specifically defined in the TRIARQ Purchase Schedule and Agreement. Customer acknowledges and understands that TRIARQ may, at its sole discretion and without notice to the Customer, assign any amount of the payments due to an authorized TRIARQ Certified Partner ("Payment Assignment"). Customer further acknowledges and understands that the TRIARQ Certified Partner will have all

the benefits of the Payment Assignment and TRIARQ will retain all other obligations under this Agreement.

- 4.13 If Customer does not pay the amounts due TRIARQ or its Payment Assignee plus applicable sales tax, if any, as specified in the Purchase Schedule within twenty (20) days of its due date, Customer is in default. If Customer defaults, TRIARQ or its Payment Assignee may do one or more of the following 1) Place Customer account on support hold and/or suspend services, 2) Charge a late fee of up to \$75 per day, and 3) Upon 10 days' notification of default to the Customer, accelerate the payment terms set forth on the applicable Purchase Schedule and demand that Customer immediately pay TRIARQ or its Payment Assignee all past due Payments and future due payments as set forth on the applicable Purchase Schedule. Customer agrees to pay TRIARQ or its Payment Assignee reasonable attorney's fees of 20% of all amounts due and owing by Customer in enforcing the payment terms as set forth in the applicable Purchase Schedule. Customer agrees that any action or proceeding related to the collection of past due and/or future due payments applicable Purchase Schedule to which Customer is a party shall BE EXCLUSIVELY ADJUDICATED IN THE APPROPRIATE COURTS LOCATED IN THE COUNTY OF OAKLAND, IN THE STATE OF MICHIGAN AND OF THE UNITED STATES DISTRICT COURT OF THE EASTERN DISTRICT OF MICHIGAN, AND ANY APPELLATE COURT FROM ANY THEREOF. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE JURISDICTION OF SAID COURTS FOR ANY SUCH ACTION.

## OWNERSHIP; INTELLECTUAL PROPERTY; CONFIDENTIALITY

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- 5.1 Licensee agrees and acknowledges that TRIARQ retains all right, title and interest in and to the Software (including copies made by Licensee except for those rights expressly granted to Licensee under this Agreement). Licensee will not identify itself as the owner of, or register, any copyright, trademark, patent, servicemark or other intellectual property right relating to the Software or this Agreement. The Software may not be duplicated, modified or otherwise reproduced except as expressly authorized herein. All right(s), title and interest in the Software shall remain with TRIARQ.
- 5.2 Licensee agrees and acknowledges that the Software contains valuable trade secrets and proprietary information of TRIARQ which have been developed at great expense over many years.
- 5.3 Licensee will not obscure, alter or remove any patent, copyright, trademark, service mark or other marking or legend contained on or in any Software.

## SECURITY

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- 6.1 Licensee will use best efforts to ensure that no unauthorized persons have access to the Software and that no persons authorized to have such access will take any action which would be in violation of this Agreement, which efforts may include, but not be limited to, imposing password restrictions on

use of the Software, securing Licensee's network on which such Software resides from outside intrusion, preventing the making of unauthorized copies of the Software, and administering and monitoring the use of the Software.

## CONFIDENTIALITY

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- 7.1 "Confidential Information" shall mean any and all information provided by TRIARQ pursuant to this Agreement including, without limitation, information related to technology, code, processes, proposed new versions of the Software, specifications, research and development, software programs, trade secrets, know-how, business plans, marketing information and studies, personnel, pricing, protocols, and other materials related thereto whether or not such information is designated as Confidential Information. "Confidential Information" specifically excludes: (a) information that is in the public domain now or in the future by publication or otherwise through no action or fault of Licensee; (b) information that is or becomes known to Licensee without any use restriction and/or confidentiality obligation, prior to receipt from TRIARQ under this Agreement, as evidenced by Licensee's written records and which was not acquired, directly or indirectly, from TRIARQ; (c) information that either Licensee receives from any third party reasonably known by Licensee to have a legal right to transmit such information without any use restriction and/or obligation to keep such information confidential; and (d) information independently developed by either Licensee's employees or agents provided that Licensee can show that those same employees or agents had no access to the Confidential Information received hereunder. "Confidential Information" also excludes patient records and patient information, which is addressed in the Business Associate Agreement between TRIARQ and Licensee.
- 7.2 Each party agrees that all Confidential Information of the other party will be treated with the same degree of care as it does its own similar information (but in no event will either party use less than a reasonable degree of care appropriate for the type of information), and will not disclose any such Confidential Information to third parties or use the Confidential Information in any way, except as contemplated by this Agreement. TRIARQ may, however, refer to Licensee (including its name and/or logo) in its customer lists and in advertising and promotional materials.
- 7.3 All Patient Privacy and Data Confidentiality will be covered under a separate HIPAA Business Associate Agreement between the parties.

## OTHER GENERAL PROVISIONS

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- 8.1 Term. The Subscription Term of this Agreement will commence on the Effective Date on the Purchase Schedule and continue for the term specified on the Purchase Schedule. Thereafter the agreement shall renew at TRIARQ's then-current subscription provider and user fees for successive 1 year periods unless either party gives written notice to the other party of its intention not to renew at least sixty (60) days prior to the end of a Subscription Term. Licensee shall remain obligated for all fees throughout the term of this Agreement. This Agreement may be terminated

by TRIARQ at any time by TRIARQ, if (i) Licensee has breached any provision of this Agreement and such breach has remained uncured for at least thirty (30) days following notice thereof, (ii) Licensee fails to make timely payment, or (iii) by TRIARQ in the event of an injunction pursuant to Section 11.3.

- 8.2 No Further Rights. Upon Termination, Licensee shall have no further rights to receive or use the Software, and TRIARQ shall have the right to suspend, disable, modify, and/or remove the Software, third-party services, and/or any of the Software modules or components.
- 8.3 Effects of Termination. Notwithstanding anything to the contrary in this Agreement, the provisions of Sections 1, 2, and 4 through 13 will survive the termination or expiration of this Agreement. Termination will be in addition to, and will not prejudice, any of the parties' remedies at law or in equity provided by this Agreement.
- 8.4 Assignment. Without the prior written and signed consent of TRIARQ, neither this Agreement nor any rights, obligations or license granted hereunder may be assigned, sublicensed, delegated, or otherwise transferred, voluntarily or otherwise, by Licensee. Any violation of this Section shall be null, void, and without effect. TRIARQ may assign its rights under this Agreement, or grant a security interest in this Agreement or such payment right to any third party without Licensee's consent.
- 8.5 Non-Disparagement. During and after the term of this agreement, neither party shall make any comments to any individual or entity, including, without limitation, colleagues, healthcare providers, customers, employees, financial or credit institutions, which could reasonably be construed as negative concerning the other party. This Section shall not be deemed to include pleadings or testimony under oath given in connection with any attempt to enforce the provisions of this Agreement.
- 8.6 Reporting. Licensee will promptly report to TRIARQ any actual or suspected violation of this Agreement and will take such further steps as may reasonably be requested by TRIARQ to prevent or remedy any such violation.
- 8.7 Data Retrieval. Licensee understands that in the event it should request TRIARQ to extract Licensee's data from the Software for any purpose, including but not limited to, the conversion of data into any other software, Licensee will be responsible for paying TRIARQ's then standard fees for such services.

## WARRANTY AND INDEMNITY

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- 9.1 Limited Warranty. TRIARQ warrants that during the term of this Agreement the Software will operate in substantial conformity with the Documentation for ninety (90) days after the date Licensee begins commercial use of the Software provided that the Software is installed and used according to the Documentation.



- 9.2 Warranty Service. Licensee’s exclusive remedy and TRIARQ’s sole liability under this warranty will be for TRIARQ to attempt through reasonable efforts to correct any material failure of the Software to perform as warranted, if such failure is reported to TRIARQ within the warranty period. Licensee, at TRIARQ’s request, will make reasonable efforts to provide TRIARQ with sufficient information (which may include access to such copies of the Software on Licensee’s computer system by TRIARQ personnel) to reproduce the defect in question.
- 9.3 Limitation. This limited warranty will not be applicable in the event that any nonconformity arises from (a) any modification to Software not made or authorized by TRIARQ, (b) use of Software in a manner, or in conjunction with software or equipment, not described in the Documentation, or in any way not permitted under this Agreement, (c) use of a version of Software that is no longer covered by the TRIARQ Maintenance Services, or (d) negligence or intentional misconduct of any user of the Software.
- 9.4 Maintenance Warranty. During the term of the Agreement, TRIARQ warrants that any Maintenance performed pursuant to the terms of this Agreement will be performed in a competent manner consistent with generally accepted industry standards. As provided in Section 4.7, TRIARQ may choose to cease Maintenance entirely or may cease Maintenance on a version of the Software or a module of the Software. TRIARQ’s entire liability and Licensee’s exclusive remedy under this limited services warranty will be for Licensee to recover only the Maintenance Fees paid for any service not meeting the terms of this Maintenance Warranty.
- 9.5 Speech Recognition Limitation. Licensee acknowledges, understands and accepts that the development Software and run-time Software employ speech recognition technology, in which speech recognition is a statistical process, and that recognition errors are inherent in the process of speech recognition. Licensee acknowledges, understands and accepts that such errors are inevitable and that it is Licensee’s responsibility to allow for such errors in the results of the Software and to inform third-parties and end users of the foregoing. Licensee formally disclaims Nuance from all liabilities of any kind.

## LIMITATIONS

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- 10.1 OTHER THAN THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, TRIARQ NEITHER MAKES NOR GRANTS ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED. TRIARQ EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS, INCLUDING SPECIFICALLY ANY AND ALL IMPLIED WARRANTIES, REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABILITY, OR FITNESS FOR ANY PURPOSE, PARTICULAR, SPECIFIC OR OTHERWISE.
- 10.2 LICENSEE’S SOLE AND EXCLUSIVE REMEDY FOR ANY DAMAGE OR LOSS IN ANY WAY CONNECTED WITH THE SOFTWARE, THIS AGREEMENT, MAINTENANCE OR ANY OTHER MATERIAL, INFORMATION OR SERVICES FURNISHED BY TRIARQ HEREUNDER, WHETHER OR NOT CAUSED BY TRIARQ’S BREACH OF WARRANTY, NEGLIGENCE OR ANY BREACH OF ANY OTHER DUTY, SHALL BE, AT TRIARQ’S OPTION, REPLACEMENT OF THE LICENSED SOFTWARE, REPERFORMANCE OF THE

SOFTWARE, MAINTENANCE OR SERVICES. IN NO EVENT SHALL TRIARQ'S LIABILITY EXCEED THE AMOUNTS RECEIVED BY TRIARQ FOR THE SOFTWARE OR FOR MAINTENANCE SERVICES UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING LICENSEE'S CLAIM FOR RECOVERY, EVEN IF TRIARQ IS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. EXCEPT FOR INSTANCES OF INTENTIONAL VIOLATION OF THE OTHER PARTY'S CONFIDENTIALITY, NON-DISPARAGEMENT, OR INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OR THE LOSS OF DATA OR INFORMATION OF ANY KIND, LOSS OR DELAY OF REVENUE AND/OR PROFITS, ADDITIONAL EMPLOYEE HOURS OR EXPENSES, OR LOSS OF ANTICIPATED SAVINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE THEREOF, HOWEVER CAUSED, OR FAILURE OF THE SOFTWARE TO WORK OR PERFORM IN ANY WAY, OR ANY LIABILITY TO END-USERS OR TO THIRD PARTIES (EXCEPT AS SET FORTH IN SECTION 11.1).

10.3 Acknowledgement. Licensee acknowledges and agrees that the level of the fees under this Agreement have been set based on the application of the limitations of liability described in the above sections.

10.4 Drug Interaction Database Limitations. This section shall be applicable if Licensee has licensed any drug interaction module or program from TRIARQ. Licensee shall not modify any drug interaction databases or information with respect to any particular drug provided by TRIARQ. Further, if any such databases or information are distributed, Licensee shall include one of the following two disclaimers at the top of any patient-education material provided to patients which contains such database or other information:

**NOTE: The following information is intended to supplement, and not substitute for, the expertise and judgment of your physician, pharmacist or other healthcare professional (Provider). It should not be construed to indicate that use of the drug is safe, appropriate or effective for you. Consult your healthcare professional before taking this drug.**

**NOTE: The information in this brochure is not intended to cover all possible uses, directions, precautions, drug interactions or adverse effects. This information is general and is not intended to substitute for personalized medical advice. If you have any questions about the medicines you are taking, or would like more information, please consult with your doctor, pharmacist or nurse.**

## INDEMNIFICATION

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11.1 TRIARQ Indemnity. TRIARQ, at its own expense, will indemnify and hold Licensee harmless against any damages, settlements, costs and expenses (including reasonable attorneys' fees) and will defend same in any threatened or actual suit, claim or proceeding arising from or relating to an allegation that use or possession by Licensee of the Software infringes or violates any valid and enforceable Intellectual Property right of any third party; provided, however, that Licensee (i) promptly notifies TRIARQ in writing of such suit, claim or proceeding after gaining knowledge of

same, (ii) gives TRIARQ reasonable information, assistance and cooperation required to defend such suit, claim, or proceeding, and (iii) allows TRIARQ to control the defense of any such action and all negotiations for its settlement or compromise. Licensee may be represented in the defense of any such claim, at Licensee’s expense, by counsel of Licensee’s selection. TRIARQ will have no liability for any awards, settlements or costs incurred without its written and signed consent.

11.2 Licensee Indemnity. Licensee, at its own expense, will indemnify and hold TRIARQ, its shareholders, directors, officers, employees and agents, harmless against any and all claims, damages, settlements, costs and expenses (including reasonable attorneys’ fees) and will defend same in any threatened or actual suit, claim, or proceeding arising from or relating to Licensee’s use of the Software. TRIARQ may be represented in the defense of any such claim, at TRIARQ’s expense, by counsel of TRIARQ’s selection. Licensee will have no liability for settlements or costs incurred without its consent.

11.3 Injunctive Relief. In the event that a final injunction is obtained against Licensee’s use of the Software by reason of infringement or violation of any valid and enforceable Intellectual Property right, or if in TRIARQ’s opinion the Software is likely to become the subject of such an injunction, TRIARQ will have the right, but not the obligation, to: (i) procure for Licensee at TRIARQ’s expense the right to continue to use the Software as provided in this Agreement, (ii) replace or modify the Software at TRIARQ’s expense so that it becomes non-infringing (so long as the functionality of the Software is substantially equivalent), or (iii) if the preceding clauses (i) and (ii) are not reasonably practicable in TRIARQ’s sole judgment, terminate this Agreement without any further obligation to Licensee.

11.4 Exceptions. Notwithstanding anything in this Agreement to the contrary, TRIARQ will not have any liability to Licensee to the extent that any claim is based upon (i) use of the Software in conjunction with any data, equipment or software not provided or authorized by TRIARQ, (ii) use of the Software in a manner not described in the Documentation or not authorized by TRIARQ, (iii) any modification to the Software not made or authorized by TRIARQ, or (iv) use of the Software in any unlawful, improper or inappropriate manner or for any unlawful, improper or inappropriate purpose.

## PROFESSIONAL DUTY.

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11.5 Licensee acknowledges that the professional duty to the patient in providing healthcare services lies with the healthcare professionals, including the Provider, who are providing services to the patients. Licensee assumes full responsibility for its use and the use of its Providers and their organizations’ uses of the Software including the input, protection, processing and use of any and all patient information in and by the Software at all points during the patient’s care. The Licensee on its own behalf and on behalf of its Providers hereby acknowledges and agrees that the use of the Software is in no way intended to replace or substitute for professional judgment of a Provider

and is in no way intended nor will it be used to relieve a Provider of its duties, obligations and standard of care to the patient. TRIARQ does not assume any responsibility for any actions of Licensee or any Provider, which may result in any liability for damages, for any breach of the standard of care for any malpractice, failure to warn, negligence or any other basis of liability for the Providers and any and all of their related service organizations, if any. Licensee hereby represents and warrants that it shall ensure that all Authorized Users, Providers and any and all other healthcare professionals using the Software are aware of and consent to the limitations of the use of the Software and to this duty to indemnify and hold TRIARQ harmless.

## GENERAL

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12.1 Dispute Resolution. If a dispute, other than a dispute arising out of or related to the collection and receipt of the payments due TRIARQ and/or its Payment Assignee referenced in paragraph 4.13 above, arises out of or relates to this Agreement, or the breach thereof, the parties shall first each appoint persons with authority to meet in order to make a good faith effort to resolve the dispute. If 60 days have elapsed since the dispute arose and such dispute cannot be settled through negotiation, the parties agree thereafter to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association at the AAA regional office in Southfield, Michigan.

If the dispute, other than a dispute arising out of or related to the collection and receipt of the payments due TRIARQ and/or its Payment Assignee referenced in paragraph 4.13 above, cannot be resolved through mediation, thereafter such dispute shall, on the written notice by any party, be submitted to final and binding arbitration under the Rules of Commercial Arbitration of the American Arbitration Association (“AAA”) in effect at the time, at the AAA regional office in Southfield, Michigan. The arbitration panel shall have full authority to grant all forms of relief including all prejudgment remedies but not any equitable relief to which the parties may be entitled and any such equitable relief may be pursued by either party in a court with competent jurisdiction under this Agreement. As used in this Agreement, “any controversy” and “claims” includes, but is not limited to, claims for breach of contract, breach of the covenant of good faith and fair dealing, torts of any kind (including, but not limited to, fraud, intentional and/or negligent infliction of emotional distress, defamation, invasion of privacy, interference with business relations, assault, battery, personal injury or death, negligence of any kind, intentional conduct of any kind, and any other tort not specifically listed), and all statutory claims. The scope of the obligation to arbitrate includes claims against officers, directors, agents and employees, claims arising under any federal or state law or regulation, and claims by employees, agents, shareholders, resellers, lenders, heirs, personal representatives, spouses, other family members, successors and assigns. Arbitration will be the sole and exclusive means to resolve any such controversy or claim, except for such other judicial procedure as may be specifically provided for in this Agreement. A demand for arbitration must be filed by a party within one year after the party discovers the conduct, act, event or occurrence first giving rise to the claim, but no later than Twenty-four months after the conduct, act, event or

occurrence first giving rise to the claim occurs, or the right to any remedy will be deemed forever waived and lost.

The arbitration panel shall be bound by the terms of this Agreement and shall make its award pursuant to and consistent with governing law and shall not apply principles of *ex aequo et bono*. The arbitrators shall have no authority to award punitive, exemplary or similar damages against either party. The decision of the majority of the arbitrators of the panel shall be final and conclusive. The arbitration panel shall issue a standard award. A judgment upon the arbitration award may be entered in a court of competent jurisdiction.

Notwithstanding the foregoing, the parties acknowledge that a breach of provisions of Sections 2.4, 4, 5, 6, 7 and 8.4 will cause irreparable injury to the non-breaching party which may not be compensable by any remedy at law because of the difficulty of proving and collecting damages, and as a result thereof, in the event of such a breach the non-breaching party shall be entitled, in addition to all other remedies, to injunctive relief in a circuit court or other court of record in the jurisdiction adopted by this Agreement enjoining the breaching party's breach thereof, together with all costs and actual reasonable attorney fees incurred in enforcing rights and such remedies.

12.2 Limitations. Neither Party may bring a claim or action, regardless of form, arising out of or related to this Agreement, more than one (1) year after the cause of action accrues, except that TRIARQ may bring a claim up to two (2) years after the cause of action accrues if LICENSEE is in default under this Agreement with respect to payments of money or if TRIARQ cannot reasonably discover the basic facts supporting the claim within one year. A party must file a counterclaim, if any, within three (3) months after a claim has been filed.

12.3 Exclusive Jurisdiction. For actions initiated by either party to this Agreement for injunctive relief to enforce its rights pursuant to Section 11.3 above or, any dispute or claim arising in connection with this Agreement that is not subject to arbitration, such as the collection and receipt of the payments due TRIARQ and/or its Payment Assignee referenced in paragraph 4.13 above, will be exclusively adjudicated in the appropriate courts located in the County of Oakland, in the State of Michigan and of the United States District Court of the Eastern District of Michigan, and any appellate court from any thereof. Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of said courts for any such action.

12.4 Compliance with Laws. Licensee will comply with, and at all times cooperate promptly with TRIARQ to enable TRIARQ to comply with, the provisions of the United States Export Administration Act, War Powers Act, or other law or Executive Order relating to control of exports or transfer of technology, and the regulations of the United States Departments of State, Commerce and Defense relating to them (in present form or as they may be amended or enacted in the future).

12.5 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the

recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth on the most recent Purchase Schedule (or at such other addresses as shall be specified by notice given in accordance with this Section).

- 12.6 No waiver. No term or provision of this Agreement will be deemed waived and no breach of this Agreement will be deemed consented to or excused, unless such waiver, consent or excuse will be expressed in writing and signed by the party claimed to have so waived, consented or excused such term or provision.
- 12.7 Excluded Laws. The application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.
- 12.8 Schedules. To the extent that terms of this Agreement conflict with the terms of any Exhibit, Addendum or Schedule, the relevant Exhibit, Addendum or Schedule will control with respect to the relevant Software or service of the Products.
- 12.9 Survival of Terms. After expiration or termination of this Agreement for any reason, all provisions relating to payment shall survive until completion of required payments. In addition, all provisions regarding scope of the license granted, audit, indemnification, warranties, liability and limits thereon, assignment and confidentiality or protection of proprietary rights and trade secrets, shall survive indefinitely.
- 12.10 Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular provisions held to be unenforceable, unless such construction would materially alter the meaning of this Agreement.
- 12.11 Headings. Captions and headings hereof are for reference purposes only and will not control or alter the meaning of this Agreement as set forth in the text.
- 12.12 Authority. Each party represents and warrants that its counsel has reviewed this Agreement and advised it regarding the terms of this Agreement and that it has the authority to enter into this Agreement and to perform its obligations contemplated hereunder and will do so in accordance with all applicable laws, rules and regulations.
- 12.13 Entire Agreement. This Agreement, together with the related Purchase Schedule and attached Schedules constitutes the entire agreement between TRIARQ and the Licensee with respect to subject matter hereof and hereby supersedes and terminates any prior agreements or understandings relating to such subject matter. This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes any and all other prior understandings, statements, warranties, representations and

agreements, oral or written. Licensee is not relying on any representations about the Software or any future releases of the Software other than the Documentation, unless such representations are attached in writing to this Agreement. Licensee hereby agrees that the printed or standard terms on any order form issued or submitted by Licensee for the Software, prior to or after this Agreement, shall not apply if, and to the extent that, they are inconsistent with this Agreement. This Agreement is considered executed in multiple counterparts, when the Customer signs the Purchase Schedule or other document in which this Agreement is referenced. Any amendment to this Agreement must be in writing and signed by both parties.



## SCHEDULE B – SOFTWARE MAINTENANCE

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Each section below shall supplement the Terms and Conditions of this Agreement.

### DEFINITIONS

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1. “Correction” means replacement distribution media or corrective code or documentation, which rectifies an Error as described herein. TRIARQ may, at its discretion, modify the end-user documentation to: (i) remove inaccuracies in the Documentation, or (ii) describes changes, modifications or improvements made to the Maintained Software. “Correction” includes, but is not limited to, workarounds, support releases, update media, immediate correction media, component replacements and patches.
2. “Documentation” means any documents relating to TRIARQ Services and Software.
3. “Error” means a defect in the Software that causes it not to perform substantially in accordance with its specifications or the documentation.
4. “Licensee Contact” Person(s) designated in writing that are authorized to contact TRIARQ Support.
5. “Maintained Software” means the TRIARQ Software licensed to the Licensee.
6. “Priority 1 Error” means an Error in the Maintained Software that causes substantial downtime of the system, or which causes data corruption, or which otherwise renders the Software unusable. Errors given this priority have no viable workaround or avoidance procedure.
7. “Priority 2 Error” means a significant Error in the Maintained Software that results in inconvenience to users of the Maintained Software, but for which a workaround or avoidance procedure is available.
8. “Priority 3 Error” means an Error in the Maintained Software that can easily be avoided or detoured. For example errors in the documentation receive this priority.
9. “Product Enhancement Request or PER” is a request for a new, enhanced, changed, modified, or removed functionality. TRIARQ will evaluate and prioritize the request and may include the functionality in a future version.
10. Releases. From time to time, TRIARQ may make available an updated version of the software.



## MAINTENANCE TERMS

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- 1.1 During the paid term of the Subscription, TRIARQ will make available to the Licensee the following Software Maintenance:
- A. Enhancements and related documentation made generally available at no additional charge to all licensees of TRIARQ Software who have purchased Maintenance Services will be provided to the Licensee provided that Licensee is in good standing with TRIARQ.
  - B. TRIARQ may provide telephone, web and e-mail consultation services including problem solving, bug reporting, documentation clarification, and technical guidance at the latest revision level or revision level immediately preceding the most recent revision level. Telephone, e-mail consultations will be available 8 am Eastern to 8 pm Eastern Monday – Friday or other hours established by TRIARQ. TRIARQ will make reasonable efforts to respond depending the priority error level.
  - C. In response to a confirmed Error in the Maintained Software, TRIARQ shall use reasonable efforts to provide on an as-needed basis at its discretion a Correction in the form of a workaround, support release, update disk, immediate correction disk, or electronic transfer equivalent, component replacement, patch, major upgrade release, or other suitable form, but TRIARQ cannot guarantee to do so. TRIARQ reserves the right to discontinue Support Services without notice on a past workaround, support release, update disk or immediate correction disk, or electronic transfer equivalent, component replacement, patch or other form of Correction after a subsequent major upgrade release, support release, or update disk or electronic transfer equivalent containing a Correction of the Error is available.

## MAINTENANCE OF PRIOR RELEASES

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- 2.1 TRIARQ will provide Maintenance Services as described herein for the most current Version Software Release and the previous Major New Version Release (e.g. 5.xx and 6.xx) immediately preceding that release.

## INSTALLATION AND CONFIGURATION OF NEW RELEASES

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- 3.1 Installation and Configuration of new Releases are provided to supported Licensee's utilizing TRIARQ's cloud services and in good standing with TRIARQ. If Licensee has customized and/or modified Software, Support does not include migrating Licensee's customizations and/or modifications to any Release, unless otherwise provided under a separate professional Services agreement pursuant to which TRIARQ provided such customizations and/or modifications.

## LICENSEE'S SUPPORT RESPONSIBILITIES

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- 4.1 Supported Environment and Operations. Licensee is responsible for undertaking the proper supervision, control and management of Licensee's use of the Software including, but not limited to: (i) providing, maintaining and assuring proper configuration of the Supported Environment; (ii) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans if not in TRIARQ's cloud environment, including restart and recovery in the event of hardware or software error or malfunction; and (iii) maintaining a procedure external to the Software for reconstruction of lost or altered files, data and programs (if not in TRIARQ's Cloud environment).
- 5.1 Assistance in Providing Support. Licensee will provide reasonable assistance to TRIARQ in determining and resolving Errors that Licensee reports. Error determination activities may include performing network traces, capturing error messages, collecting configuration information and other similar activities to allow TRIARQ to reproduce the Error. Resolution activities may include access to Licensee's personnel and/or remote access to the Supported Environment. Licensee agrees to allow TRIARQ to use remote access tools, with the participation and under the supervision of a Licensee Contact, to access the Software in the Supported Environment and modify its configuration as part of TRIARQ Error determination and resolution activities. TRIARQ may not be able to provide Licensee with an Error Correction without such remote access. Licensee is responsible for performing activities to implement Error Corrections TRIARQ provides and for responding in a timely manner to requests for information by a TRIARQ Support Representative. Error Corrections may include changing, installing or reinstalling new or existing versions of software or new components, or modifying processes. Any information Licensee provides TRIARQ in connection with the Support process that Licensee designates as confidential will be used only to resolve reported Errors and will not be disclosed to anyone other than TRIARQ personnel involved in resolving the Error. As part of TRIARQ's Error resolution process, information Licensee provides to TRIARQ may be made available to TRIARQ employees in foreign countries, unless Licensee notifies TRIARQ otherwise in writing when providing TRIARQ with such information.
- 6.1 Reporting. Licensee agrees to report suspected Errors through Licensee's Contact to TRIARQ. Reports will include sufficient description and detail for TRIARQ to reproduce the suspected Error. Licensee will use best efforts to properly categorize the Error according to the "Priority" definitions in this Addendum. Failure to provide this minimum description and detail may cause delays in responding to the Error.
- 7.1 Designation of Support Contacts. For Basic Support, Licensee will designate up to two individuals as the Licensee Contacts for receiving support hereunder and notify TRIARQ of the Licensee Contacts. For Essential Support, Licensee will designate up to four individuals as the Licensee Contacts for receiving support hereunder and notify TRIARQ of the Licensee Contacts. Licensee may change the Licensee Contacts by notifying TRIARQ, but may not have more than the number of Licensee Contacts set forth above at any one time. Each Licensee Contact may not be changed more than once in a thirty (30) day period.

8.1 Training. Licensee is responsible for proper training of the Licensee Contacts and all other appropriate personnel in the operation and use of the Software and the Supported Environment.

## MAINTENANCE NOT COVERED BY THIS AGREEMENT

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9.1 TRIARQ is not responsible or liable for causes external to the Software ("Excluded Services"), including but not limited to: (i) Licensee's failure to accept new releases; (ii) installation of the Software or any New Version Releases not in accordance with the Documentation provided with the Software or New Version Releases if not utilizing TRIARQ's Cloud environment; (iii) Licensee's use of the Software with any software or hardware other than the Supported Environment; (iv) problems resulting from use of the Software in a manner not permitted pursuant to Licensee's license; (v) modifications, alterations, or additions to the Software by parties other than TRIARQ (including without limitation, modifications, alterations, or additions to the Software made by Licensee); or (vi) damage from any source other than TRIARQ including but not limited to water, humidity, fire, power surges, computer viruses, and accidents. Any maintenance or Services required to fix the Excluded Services will be billed to Licensee on a time-and-materials basis in accordance with TRIARQ then current rates. Such Services shall be set forth on a mutually agreed upon Services SOW. Support does not include maintenance in connection with or correcting Errors arising out of or related to a server or any other third party component that is used in conjunction with the Software. TRIARQ may, but is not required to, provide Error Corrections for such Errors at TRIARQ's then current time and materials rates. Support does not include Software installation, configuration or Services provided on-site at Licensee's location. If TRIARQ is required or requested to travel to Licensee's facilities, any Services will be provided at then current time and materials rates and Licensee will reimburse TRIARQ for all reasonable travel expenses, including meals and lodging. TRIARQ is not responsible for restoring lost data or damage to Licensee's database that result from Licensee's actions. If Licensee desires to purchase upgrade Services or other professional Services from TRIARQ outside the scope of the Support in this Agreement, then TRIARQ will provide such professional Services to Licensee for a charge as set forth in a mutually agreed upon professional Services agreement.

10.1 Specific Support Services not included: It is the responsibility of the Licensee to engage and pay for any items not supported by TRIARQ and for the following Services.

- Off hours, weekends, and holiday support
- Installations and upgrades outside of business hours (applicable to non-Cloud environment)
- Support for replicating portable or roaming workstations
- Support for the physical environment such as PCs, servers, or other hardware
- Support for the Operating System or other software not sold by TRIARQ unless specifically included above

- Support for the network, network software & infrastructure, Internet, fax equipment and software (if not purchased through TRIARQ), and clearing house (if not purchased through TRIARQ)
- Support for any third-party devices or software (scanners, PACS, etc.)
- Third Party Altered or modified Software
- Any combination of Software and other software not covered by this Schedule.
- A Release of Software for which Support Services has been discontinued.
- Errors caused by Licensee's negligence or fault.
- Errors resulting from hardware malfunction.
- Errors that do not significantly impair or affect the operation of the Software.
- Software used on a computer or operating system other than that specified by Licensee and accepted by TRIARQ on the Support Registration Form.

## ADDITIONAL SERVICES AND CHARGES

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11.1 TRIARQ may offer additional Services such as training under a separate Services Agreement.

12.1 TRIARQ reserves the right to charge for Services outside of the range of normal support Services. Such Services considered outside of the range of normal support Services are: (1) debugging application coding errors in a Customer's application, (2) debugging problems in non-TRIARQ supported products, or in combinations of TRIARQ supported and non-supported products where the problem occurs in the non-TRIARQ product, and (3) other cases where it is judged highly likely that the suspected problem is not the responsibility of TRIARQ or caused by the Software.

When a situation occurs where a reported problem is likely to fall outside of the range of supported Support Services, Licensee will be advised of the potential of incurring charges to have TRIARQ work on the problem. A written estimate of the cost of the additional Services ("Estimate") will be prepared and delivered to Licensee for approval and agreement. Should TRIARQ determine that the problem is, indeed, caused by the Maintained Software, no charges will be incurred. However, if it is proven that the problem is not the responsibility of TRIARQ, Licensee will be charged for the time spent at the rates specified in the Estimate.

Should Licensee not agree that the requested service falls out of the bounds of supported Services, TRIARQ will assign a representative to mediate the issue.

- 13.1 TRIARQ, upon prior notice, reserves the right to charge for unusual or excessive support person time in connection with the Support Services provided under this Schedule. Reasonable shipping, handling, media and user documentation charges in connection with the provision of the upgrades and service shall be payable by Licensee.