

MAXMD MASTER AGREEMENT

This Master Agreement (this “**Agreement**”) is entered into as of [] (the “Effective Date”), by and between Park Avenue Capital, LLC, d/b/a MaxMD (“**MaxMD**”), a Georgia limited liability company with offices at 5 Compton Way, Bridgewater, NJ 08807, and the Client entity set forth below with a principal place of business at [] (“**Client**”).

This Agreement consists of (i) this Signature Cover Page, (ii) the Terms and Conditions attached hereto as Exhibit A (including any documents attached thereto or incorporated by reference therein), (iii) if Client is subscribing to a MaxMD Service, all Sales Orders for such MaxMD Service, and (iv) if Client is purchasing Professional Services, all Statements of Work for such Professional Services.

In addition, the following agreements shall also apply and form part of this Agreement if checked or hereafter incorporated:

- ___ - Agent Registration Agreement attached hereto as Exhibit B;
- ___ - Business Associate Agreement attached hereto as Exhibit C;
- ___ - MaxMD Mobile Application User Agreement, a current version of which is available at <https://www.maxmddirect.com/mobile/documents/MobileAppUserAgreement>

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

PARK AVENUE CAPITAL, LLC

By: _____

Name: _____

Title: _____

CLIENT: [SPECIFY CLIENT NAME AND STATE OF INCORPORATION OR FORMATION]

By: _____

Name: _____

Title: _____

Exhibit A
Terms and Conditions

1. Agreement.

1.1 Defined Terms. Capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings set forth on Attachment 1 hereto.

1.2 Subscription Service and Sales Orders. MaxMD will provide Client a subscription to each MaxMD Service set forth in Sales Orders entered into between the parties from time to time for the term and at the pricing set forth therein. In the event of any conflict between the documents comprising this Agreement and the provisions of a Sales Order, this Agreement will prevail unless the Sales Order expressly states that it is amending a specific Section of this Agreement.

1.3 Professional Services and Statements of Work. MaxMD will provide the Professional Services set forth in each Statement of Work entered into between the parties from time to time for the term and at the pricing set forth therein. All such Professional Services will be provided in accordance with the Professional Services Terms and Conditions set forth on Attachment 2 hereto. In the event of any conflict between the documents comprising this Agreement and the provisions of a Statement of Work, this Agreement will prevail unless the Statement of Work expressly states that it is amending a specific Section of this Agreement.

1.4 Other Agreements.

(a) Simultaneously with the execution of the Agreement, MaxMD and Client are entering into the other agreement(s) referenced on the Signature Cover Page of this Agreement, each of which shall be co-terminus with this Agreement.

(b) In addition, a specific MaxMD Service and/or a Third Party Application (as defined in Section 20 of Attachment 1) provided in connection therewith may require Client and/or its Authorized Users to agree to an Acceptable Use Policy or other additional terms and conditions applicable to that Service or Third Party Application. Any such Acceptable Use Policy or other terms and conditions between Client or and Authorized User, on the one hand, and a Third Party Provider, on the other hand, govern Client's and/or the Authorized User's use of that Third Party Application and Client hereby agrees to indemnify and hold harmless MaxMD for Client's and its Authorized Users' use of such Third Party Application.

(c) If Client has executed the Agent Registration Agreement and is making the Service available to its vetted customers or other third parties who are granted Organizational Certificates in accordance with the Agent Registration Agreement, Client will enter into an agreement with such third party governing such third party's access and use of the Service (a "Customer Terms of Use") which is consistent with the terms of this Agreement (including, without limitation, Section 3 hereof) and which does not grant such third party (or any of its Authorized Users) any right or interest in or to the Service and which makes no representation, warranty, covenant, commitment or indemnification on behalf of MaxMD. Each Customer Terms of Use will be between Client and the third party and MaxMD shall have no obligations thereunder; provided that MaxMD will be a third party beneficiary of such Customer Terms of Use with respect to the Service and such third party's user thereof.

2. Subscription Service.

2.1 Scope. Subject to the terms and conditions of the Agreement, Client hereby engages MaxMD, and MaxMD hereby agrees, to provide the MaxMD Service set forth in Sales Orders executed by the parties from time to time. Client acknowledges and agrees that MaxMD's provision of the Service is expressly conditioned upon Client's performance of its duties and obligations under this Agreement. MaxMD shall have no liability for its failure to perform the Service or any other services to the extent such failure is the result of Client's failure to timely perform its obligations or responsibilities under this Agreement.

2.2 License.

(a) MaxMD hereby grants Client a subscription, during the term of each Sales Order, in the form of a non-exclusive, non-transferable (except as expressly provided herein), non-sub-licensable (except as expressly provided herein), limited right and license, for Client to access and make the Service set forth in such Sales Order available to Authorized Users, subject to any restrictions set forth in this Agreement or the Sales Order.

(b) In the event Client purchases subscriptions for its Authorized Users to use the MaxMD Mobile Application pursuant to a Sales Order, MaxMD will provide a license to use the MaxMD Mobile Application to that number of concurrent Authorized Users set forth in the Sales Order who agree to be bound by the MaxMD Mobile Application Authorized User Agreement, all in accordance with the provisions thereof.

2.3 Intellectual Property Rights. All Intellectual Property Rights and other proprietary rights in and to the Service and MaxMD Mobile Application, and all modifications, enhancements and derivative works thereof, and Updates thereto, are hereby expressly reserved exclusively to MaxMD and its licensors. No Intellectual Property Rights in or to any Third Party Application are granted to Client pursuant to this Agreement.

2.4 Implementation Checklist. MaxMD will provide Client with an implementation checklist (the "Implementation Checklist"), which must be completed prior to making the Service available for production use. Each party will fulfill its respective obligations and cooperate with the other party in fulfilling its obligations, in the Implementation Checklist.

2.5 Support. MaxMD will allow up to two (2) Client representatives trained on the Service to contact MaxMD with technical questions with respect to the Service and to report Service outages or failures. MaxMD will provide email support or a representative or help desk during MaxMD's normal business hours to answer such technical support questions from the Client representatives. Normal business hours are 9:00a.m to 6:00p.m., Monday through Friday, prevailing Eastern Time. Notwithstanding anything to the contrary herein, as between the parties, Client shall be solely responsible for answering all questions and providing all support to Authorized Users with respect to their use of the Service and shall, upon request of MaxMD, instruct any Authorized Users to not contact MaxMD directly.

2.6 Service Levels. MaxMD will use commercially reasonable efforts to provide the Service in all material respects in accordance with the respective services levels set forth on Attachment 3 hereto.

2.7 Data Encryption. MaxMD will provide, or cause to be provided, the current type of encryption set forth in the Documentation, or in the event MaxMD is providing hosting services, as supported by applicable browser software, in a manner designed to provide a secure environment for the Service.

2.8 Data Backup and Return. For Clients who purchase MaxMD's Hosted Direct mdEmail® accounts, MaxMD will maintain a disaster recovery plan whereby incremental backups of Data transmitted by Client through the Service shall be done once a day and full backups of databases shall be done once per week. The backup information shall be stored in a secure facility in the United States, currently Rackspace, Inc. and Iron Mountain Incorporated. Upon termination of this Agreement for any reason, MaxMD will agree to store Client Data for a period of up to six (6) months at MaxMD's then-current monthly storage charges and will make such Client Data available for retrieval by Client during such time. At the end of such six (6) month period, MaxMD may delete any such Client Data not retrieved by Client.

2.9 Modifications to Service Due to Changes in Standards or Applicable Law. MaxMD uses commercially reasonable efforts to comply with the Office of the National Coordinator for Health Information Technology ("ONC") certification requirements for EHR service providers under the ONC Health IT Certification Program and DirectTrust accreditation requirements under the DirectTrust Accredited Trust Bundle as a HISP, Registration Authority and Certification Authority (collectively, the "Certification and Accreditation Requirements") and will, as part of the Service, use commercially reasonable efforts to the extent practical to modify the Service to comply with any published changes to the Certification and Accreditation Requirements, or any applicable changes to HIPAA or HITECH that directly impact MaxMD's obligations as a data processor in providing the Service, once they have

become defined and finalized. MaxMD will also use commercially reasonable efforts to complete such modifications within a commercially reasonable time frame. If MaxMD is unable to do so, MaxMD may, subject to Section 4.6, terminate this Agreement upon written notice to Client. The latest ONC 2015 Edition Final Rule Certification Requirement for EHR service providers is located at <https://www.healthit.gov/policy-researchers-implementers/2015-edition-final-rule>. The DirectTrust Certificate Practices that MaxMD follows are listed in MaxMD's Certificate Practices Statement ("CPS") located at <https://www.directmdemail.com/documents/DirectPolicy>, and are in the certificate issued to your organization which can be retrieved at <https://www.directmdemail.com/direct/Certificate> by entering your Direct Domain as the Direct Address. MaxMD may update the CPS from time to time. Any changes to MaxMD's CPS will be posted on the MaxMD website.

2.10 Updates. MaxMD reserves the right to add or modify features or functions, or to provide programming fixes and updates to a Service (collectively "Updates"). In the event any such Updates require the payment of additional fees from Client to MaxMD, Client shall only be responsible for such fees if it agrees in writing to accept the related Updates and the related additional fees.

2.11 Suspension. MaxMD may suspend a Service without liability if (i) there is an attack on the hosting environment used for the Service, (ii) MaxMD is requested or required by law or law enforcement agency; or (iii) there is another event for which MaxMD reasonably believes that suspension of the Service is necessary or appropriate to protect its or a Third Party Provider's network, the Service, the Client's network, or other Clients or Authorized Users or their Data. MaxMD will use commercially reasonable efforts to give or have given to Client advance notice of a suspension under this Section, unless such advance notice is prohibited by law, not practical or MaxMD determines in its reasonable commercial judgment that a suspension without notice is necessary or prudent to protect MaxMD, Third Party Providers or other Clients or Authorized Users, or their respective networks and data, from imminent and significant operational or security risk.

3. Client Obligations.

3.1 Client Resources and Requirements. Client and each Authorized User is solely responsible for obtaining and maintaining all resources, software, equipment, Internet connectivity, hardware and other technology required to provide the Data to MaxMD and to access and use the Service (the "Access Technology"). Client will ensure that the Access Technology is compatible with MaxMD's requirements. Client will be responsible for ensuring the security of the Access Technology.

3.2 Accuracy and Completeness of Data. As between the parties, Client and its Authorized Users shall be solely responsible for the content, accuracy and completeness of all Data transmitted through the Service. MaxMD does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any Data transmitted, configured, reformatted and/or transformed through the Service. The Service may provide functionality that permits Client and Authorized Users to initiate, transmit, send and receive electronic, secure messages to and from Authorized Users, with attachments and message bodies that may contain PHI and/or ePHI.

3.2.1 If Client is a subscriber to the MaxIntegration Service, (i) any Client instructions and requirements for the configuration, reformatting and/or transformation of Data shall be specified in the applicable Statement of Work or Sales Order; (ii) Client hereby appoints MaxMD as its agent for purposes of configuring, reformatting and/or transforming the Data on Client's behalf; and (iii) Client hereby directs MaxMD to configure, reformat and or transform Data as instructed by Client.

3.2.2 Client shall be solely responsible for promptly notifying MaxMD of any changes to (i) Client business information or (ii) Authorized User information. Such Client business information changes may be a result of business renaming, reorganization, relocation, or other circumstance which may affect Client's name, HIPAA status, business address, mailing address, or phone number. Changes to Authorized User information may be a result of Client employee turnover, employee name change, employee relocation or other circumstance which may affect Authorized User's name, HIPAA status, business address, mailing address, or phone number.

- 3.3 Compliance with Laws.** Client and each Authorized User will be responsible for complying with HIPAA, HITECH and any other applicable Privacy Laws in its or their use of the Service or Professional Services. Client will specify any policies and/or procedures to be followed by MaxMD during the customization and provision of the Service to comply with such laws, and any such policies and procedures shall be documented in writing. MaxMD will provide the Service at all times in accordance with the Direct Rules or any other applicable provisions of HIPAA or HITECH directly applicable to MaxMD in its role as a data processor. As between MaxMD and Client, Client shall be solely responsible for maintaining an unalterable copy of any relevant Client Data for the applicable retention period as required by HIPAA.
- 3.4 Logins.** Client and Authorized Users will maintain the security of all user IDs and passwords assigned for use of the Service (“Credentials”). Client will maintain, and require third party Authorized Users to maintain, such security by at a minimum ensuring that: (i) no one uses any Credential other than an Authorized User, (ii) not permitting Credentials to be accessed by non-Authorized Users; and (iii) promptly notifying MaxMD of any person who is no longer authorized to use the Service on Client’s or the third party Authorized User’s behalf and take immediate action to block such person’s access to the Service. Client will be responsible and indemnify MaxMD for all use of Client’s and its Authorized Users’ accounts.
- 3.5 Conduct of Client’s Business.** As between MaxMD and Client, Client agrees that Client and its Authorized Users will be solely responsible for (and none of MaxMD, Third Party Providers, or their affiliates, suppliers or licensors shall have any responsibility for) the conduct of its Client’s and its Authorized Users’ respective businesses and any use of the Service by Client or Authorized Users.
- 3.6 General Restrictions.** Client and each Authorized User shall use the Service in compliance with all applicable laws and shall not decompile, disassemble, or reverse engineer any part of the Service or any related applications or software. Client must ensure that anyone with authorized access to the Service through Client will comply with the provisions of the Agreement and any applicable Acceptable Use Policy. Without the written consent of MaxMD, neither Client nor any Authorized User may (i) access or use any portion of the Service not authorized in a Sales Order, (ii) circumvent any usage or other restrictions imposed, (iii) copy, print, alter, or translate the Service or any associated software or applications, (iv) create any derivative work of the Service or any associated software or applications, or use any of the foregoing for application development purposes, (v) disclose or publish performance benchmark results or test results to non-affiliated third parties with respect to the Service or associated software or applications, (vi) export the Service or any associated software or applications in violation of U.S. Department of Commerce export administration regulations, (vii) delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on, in or through the Service, (viii) sublicense, sell, lease, rent, timeshare, distribute, or otherwise attempt to transfer its rights to access and use the Service and/or Documentation to any other person or entity except as expressly permitted herein; or (ix) use the Service in a facility management or service bureau manner or permit third parties to access the Service over the Internet or through an application service provider model except as expressly provided herein.

4. Fees.

- 4.1 Fees.** As consideration for the Service and any MaxMD Professional Services to be provided hereunder, Client shall pay to MaxMD the agreed fees, charges and expenses set forth in the Sales Order(s) or Statements of Work (as provided therein (the “Fees”).

Client Billing Point of Contact information:

Name: _____

Email address: _____

Telephone: _____

- 4.2 Late Payments.** Payments which are not received when due shall bear interest at the lesser of the maximum monthly amount chargeable by law, or one and one-half percent (1.5%) per month.

- 4.3 Changes to Fees.** MaxMD will provide Client with written notice of any changes to the Fees at least thirty (30) days prior to the end of the initial term or then-current renewal term of the applicable Sale Order or Statement of Work, as the case may be.
- 4.4 Taxes.** Excluding taxes based on MaxMD's net income, Client is liable and responsible for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, and all duties, tariffs and customs fees relating to Client's use or receipt of the Service or professional services, unless Client timely provides MaxMD with a valid tax exemption certificate.

5. Term and Termination.

- 5.1 Term.** This Agreement shall commence as of the Effective Date and, unless terminated as provided in this Section 5, shall remain in full force and in effect for an initial term of three (3) years from the effective date of the initial Sales Order (which commences upon movement of the technical implementation of the Service described therein into a production environment) (the "Initial Term") and shall automatically renew for successive renewal terms of one (1) year each (each, a "Renewal Term"), unless either party gives the other party at least thirty (30) days prior written notice of its intent not to renew this Agreement prior to the expiration of the Initial Term or then-current Renewal Term. The Initial Term and all Renewal Terms (together with any transition period) are referred to herein as the "Term". Notwithstanding the foregoing, this Agreement shall remain in effect with respect to any outstanding Sales Order or Statement of Work at the time of termination of this Agreement. Either party may terminate this Agreement upon written notice to the other party in the event no Sales Order or Statement of Work is outstanding hereunder. Unless otherwise expressly set forth in the Sales Order, each subsequent Sales Order, and the Service purchased therein, shall have an independent initial term of one (1) year from the date that the Service is made available or activated for Client or Authorized Users (each being referred to herein as the "Subsequent Sales Order Term"), and each such Subsequent Sales Order Term shall automatically renew for successive renewal terms of one (1) year each (each, a "Subsequent Sale Order Renewal Term"), unless either party gives the other party at least thirty (30) days prior written notice of its intent not to renew such Sales Order prior to the expiration of the Subsequent Sales Order Term or then-current Subsequent Sales Order Renewal Term. The term of any professional services under a Statement of Work shall be as set forth in the Statement of Work.
- 5.2 Termination for Cause.** Either party may terminate this Agreement or a Sales Order or Statement of Work in the event the other party commits a material breach of this Agreement or such Sales Order or Statement of Work and fails to cure such breach: (i) in the case of non-payment, within ten (10) days following the breaching party's receipt of written notice from the non-breaching party setting forth the amount due; or (ii) in all other cases, within thirty (30) days following the breaching party's receipt of a written notice from the non-breaching party setting forth the nature of such breach (unless the breach, by its nature, is curable but incapable of being cured within such thirty (30) day period, in which case the breaching party shall have a reasonable period of time thereafter provided it promptly commences to cure such breach and proceeds diligently therewith until cured).
- 5.3 Termination for Insolvency.** Either party may terminate this Agreement immediately upon notice and without opportunity to cure in the event of the other party's insolvency; adjudication of insolvency; filing of a voluntary petition in bankruptcy or a voluntary petition or answer seeking reorganization, arrangement or readjustment of its debts or any agreement of the other party indicating its consent to, approval of or acquiescence in any such petition or proceeding; or the application by the other party for or the consent or acquiescence of the other party to the appointment of a receiver or trustee over all or a substantial part of the other party's property or assets; or the filing of an involuntary petition against the other party seeking reorganization, rearrangement or readjustment of its debts or for any other relief under any insolvency act or law, now or hereafter existing (which petition is not dismissed within sixty (60) days); or the involuntary appointment of a receiver or trustee over all or a substantial part of the other party's property or assets.
- 5.4 Termination of the Agent Registration and Other Agreements.** In the event of termination of this Agreement and as applicable, the Agent Registration Agreement, Business Associate Agreement and MaxMD Mobile Application User Agreement shall also terminate at the same time as well as any subscriptions to the MaxMD Mobile Application purchased pursuant to a Sales Order.

5.5 Obligations Upon Termination. Upon termination or expiration of this Agreement for any reason, all financial obligations of Client hereunder shall be immediately due and payable in full including, but not limited to, (i) any fees due through the end of the Initial Term or Renewal Term, as applicable, including any interest that may be due thereon in accordance with Section 4.2, and (ii) any outstanding fees, charges and expenses and other sums that have accrued or are otherwise outstanding or owed by Client to MaxMD as of the date of termination or expiration. Subject to Section 5.6, Client's access to the Service and, to the extent applicable, Authorized Users use of the MaxMD Mobile Application, shall immediately cease and Client shall be prohibited from further access to or use of the Service and its Authorized Users subscription to the MaxMD Mobile Application shall expire; provided that MaxMD will make Client Data available for retrieval by Client for a period of sixty (60) days following termination. Notwithstanding any termination of the Agreement or Sales Order, the provisions of Sections 2.3, 2.8, 3.2, 3.5, 3.6, 4.1, 4.2, 4.4, 5.5, 5.6, 6.1, 6.2.2, 6.3, 6.4, 6.6, 6.7, 7.1, 7.3, 7.4, 8, 9, 10.1, 10.3, and 10.5-10.12 shall survive such termination in accordance with their respective terms.

5.6 Transition Services. If this Agreement is terminated other than due to Client's material breach, upon giving or receipt of notice of termination, unless otherwise requested by Client, MaxMD shall cooperate with Client, at Client's sole cost and expense at MaxMD's then current rates, to effect the transition of the Service to Client or a third party designated by Client in an orderly fashion designed to cause minimal interruption Client's and MaxMD's business. In no event shall the transition period be extended more than ninety (90) calendar days from the date of such notice (the "Transition Services Period"). During the Transition Services Period, Client will continue to pay MaxMD Fees for the Service pursuant to the terms of this Agreement at the pricing terms in effect as of the date of such notice.

6. Confidentiality.

6.1 Use of Data. During the Term, MaxMD will not gather, store, log, archive, use or otherwise retain Client Data other than any incidental PHI contained in hosted Direct mdEmail@ accounts and will not disclose, distribute, sell, share, rent or otherwise transfer any Client Data to any third party, except as expressly provided or contemplated in this Agreement, the Implementation Checklist or as MaxMD may be expressly authorized (including, without limitation, pursuant to Section 6.4 below) or directed in advance in writing by Client or as reasonably necessary to provide the Service. MaxMD will use Client Data only in compliance with this Agreement and Client's instructions. Without limiting the foregoing, Client hereby grants MaxMD during the Term (including any transition period) a non-exclusive, paid-up license to exchange Client Data with its Third Party Providers and any other person or entity set forth in the Implementation Checklist or any Sales Order or statement of work or as reasonably necessary or required to provide the Service to Client, and Client acknowledges that it is solely responsible for putting in place and maintaining a business associate agreement with any such persons or entities set forth in the Implementation Checklist or any Sales Order or Statement of Work for the exchange of Client Data on Client's behalf. MaxMD will put a business associate agreement in place with any of its Third Party Partners to the extent required by HIPAA or other applicable law. In the event of any breach of security or confidentiality of PHI hereunder that requires notification to an individual under any privacy law, Client shall have sole control over the timing, content, and method of such notification. In the event of any breach of security or confidentiality of PHI by MaxMD that requires notification under any applicable Privacy Laws, MaxMD shall cooperate with Client to provide any required information held or maintained by MaxMD, at the Client's expense. Further, MaxMD will not knowingly retain any Client Data for any period longer than necessary for MaxMD to fulfill its obligations or exercise its rights under this Agreement. As soon as MaxMD no longer needs to retain such Data to perform its duties or exercise its rights under this Agreement, MaxMD will make the Client Available Data available for retrieval by Client pursuant to Section 5.6 or erase or destroy all originals and copies of such Client Data pursuant to Section 2.8 to the extent reasonably possible and not prohibited by legal requirements; provided, however, that any PHI will be made available to Client or destroyed or retained consistent with the Business Associate Agreement referenced in this Agreement. If it is not reasonably possible to erase or destroy Client Data or such erasing or destruction is prevented by legal requirements, such Client Data shall nevertheless remain subject to the confidentiality provisions of this Agreement and no use or disclosure of such Client Data shall be made except for the purposes that prevented its return or destruction. Without limiting the foregoing, Client and/or the Authorized User will be solely responsible for verifying the accuracy of all PHI and ePHI transmitted through the Service, and for obtaining any information as may be appropriate to supplement such PHI and ePHI, including any required patient consents.

- 6.2 Aggregated Data.** MaxMD will own and shall have the right to use aggregated, non-personally identifiable statistical data derived from the operation of the Service across its customer base, including without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (collectively, the “Aggregated Data”) for valid commercial purposes including, without limitation, operation of MaxMD’s business and operating and improving the Service; provided, however, that MaxMD’s use of Aggregated Data will not reveal the identity of Client, any Authorized User or any of their respective affiliates or personnel. In no event shall the Aggregated Data include any personally identifiable information.
- 6.3 Confidentiality.** During performance of this Agreement, in the event either party (the “Receiving Party”) is provided and/or exposed to Confidential Information of the other party or its contractors (the “Disclosing Party”), the Receiving Party shall hold as strictly confidential all Confidential Information of the Disclosing Party, and the Receiving Party shall not sell, transfer, rent, use, disclose or otherwise make available, without the Disclosing Party's prior written consent, any of the Confidential Information of the Disclosing Party to any person or entity, except its employees, professional advisors and contractors to whom such information must be provided to carry out the purpose and intent of this Agreement, and who have agreed in writing to be bound by terms of confidentiality (or in the case of professional advisors, are under obligations of professional responsibility and confidentiality) no less restrictive than those contained in this Section 6. The Receiving Party agrees to use the same care to protect the Confidential Information of the Disclosing Party that it uses to protect its own Confidential Information, but no less than a reasonable standard of care.
- 6.4 Exceptions to Obligations.** Notwithstanding anything to the contrary contained in this Agreement, the Receiving Party shall not be obligated to treat as confidential, or otherwise be subject to the restrictions on use, disclosure or treatment contained in this Agreement for, any Confidential Information or Trade Secrets of the Disclosing Party which: (a) is rightfully known to the Receiving Party prior to its disclosure by the Disclosing Party; (b) is publicly available through no breach of the Disclosing Party; (c) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information or Trade Secrets; or (d) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party. In addition, the Receiving Party may disclose Confidential Information and Trade Secrets of the Disclosing Party to the extent such disclosure is required by any rule, law, regulation, court, court order, or government or quasi-governmental authority, provided the Receiving Party notifies the Disclosing Party, if permitted by law, of the applicable legal requirements before such disclosure occurs so as to enable the Disclosing Party to obtain such protection as may be available to preserve the confidentiality of such information.
- 6.5 DirectTrust Directory Sharing Policy.** As a MaxMD subscriber, Client qualifies for participation through MaxMD as a “Client” in the DirectTrust Directory Sharing Policy administered by DirectTrust and more fully described at https://www.max.md/CA_Repository/FINAL_DirectTrustDirectoryDataSharingPolicy.pdf (the “Directory Policy”), and Client hereby consents and agrees to participate as a Client in the Directory Policy, subject to the following terms and conditions. Client hereby agrees to be bound by and comply with all terms and conditions of participation as a Client in the Directory Policy. Client further agrees to share Direct Addresses and associated Directory Information (as more fully outlined in the Directory Policy) at all times during Client’s participation in the Directory Policy program (including, without limitation, obtaining the consent of all Authorized Users and other persons or entities sharing information in connection with the Directory by or through MaxMD) and Client shall indemnify, defend and hold harmless MaxMD against any and all losses and claims arising out of Client’s participation in the DirectTrust Directory Sharing Program and/or the Directory Policy. Client acknowledges and agrees that, as between the parties, Client is responsible for ensuring that the use of Directory Information by all persons accessing, providing or obtaining Directory Information is in accordance with the Directory Policy.
- 6.6 No Adequate Remedy; Survival.** The Receiving Party agrees that the Disclosing Party will have no adequate remedy at law if there is a breach or threatened breach of this Section 6 and, accordingly, the Disclosing Party shall be entitled (in addition to any legal or equitable remedies available to such Disclosing Party) to injunctive or other equitable relief to prevent or remedy such breach. The obligations under this Agreement with regard to Confidential Information that constitutes a Trade Secret shall remain in effect during the term of this Agreement and for the longer of (a) as long as such information remains a Trade Secret or (b) three (3) years after the expiration or termination of this Agreement.

The obligations with regard to Confidential Information that does not constitute a Trade Secret shall remain in effect during the term of this Agreement and for three (3) years after the expiration or termination of this Agreement.

6.7 Return of Confidential Information. Upon written request of the Disclosing Party or upon termination of this Agreement, the Receiving Party shall cease using the Disclosing Party's Confidential Information and promptly return to the Disclosing Party (or destroy at the Disclosing Party's request) the Confidential Information and all copies thereof, and upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this Section. If it is not reasonably possible to return or destroy Confidential Information or such return or destruction is prevented by legal requirements, such Confidential Information shall nevertheless remain subject to the confidentiality provisions of this Agreement and no use or disclosure of such Confidential Information shall be made except for the purposes that prevented its return or destruction.

7. Representations and Warranties.

7.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that: (i) it is duly organized and validly existing under the laws of its jurisdiction of organization; (ii) it has the legal power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (iii) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary actions and do not violate its organizational documents or any other material agreements to which it is a party; and (iv) this Agreement constitutes the legally valid and binding obligation of such party enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable laws, rules or regulations.

7.2 MaxMD Representations and Warranties for a Service. MaxMD represents and warrants to Client that the Service shall provide the functionality described in the Documentation. In the event of any breach of the foregoing warranty, MaxMD shall at its option, and as Client's sole and exclusive remedy: (i) re-perform the nonconforming Service, (ii) repair or replace the nonconforming portion of the Service to make it conforming, or (ii) if neither of the foregoing is commercially practical, refund the fees paid for only the nonconforming portion of the Service for the period of time the Service was not provided as warranted. Notwithstanding the foregoing, MaxMD will have no obligation to provide any such remedy if the non-conformity is caused by: (i) use of the Service other than in accordance with this Agreement or the Documentation; (ii) any error, defect or non-conformance which cannot be reproduced by MaxMD; (iii) modification of the Service by anyone other than MaxMD; or (iv) any third party hardware, software, databases or systems which are not part of the Service.

7.3 Disclaimer of All Other Warranties. SUBSCRIBER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT EXCEPT FOR THE LIMITED EXPRESS WARRANTY SET FORTH IN SECTION 7.2 OR THE LIMITED EXPRESS WARRANTY SET FORTH IN ATTACHMENT 2 FOR PROFESSIONAL SERVICES, THE SERVICE, SERVICES, AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. MAXMD HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE WITH RESPECT TO THE SERVICE, SERVICES, DOCUMENTATION OR THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

7.4 Special Acknowledgements. Client understands and agrees that the Service may be subject to limitations, unavailability, delays and other problems inherent in the use of the Internet and electronic communications not provided by MaxMD. MaxMD is not responsible for any delays, delivery failures, or any loss or damage to the extent resulting from such causes. MaxMD does not make any guarantees of speed or availability of end-to-end connections. Client acknowledges that MaxMD does not control the transfer of data over the Internet or to or from MaxMD's technology platform and other portions of the Internet, and MaxMD does not warrant that it will be able to prevent third party disruptions of such transfers. MAXMD WILL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER RESULTING FROM CONNECTION TO OR USE OF THE INTERNET.

8. Indemnification.

- 8.1 Indemnification by MaxMD.** MaxMD shall indemnify, defend and hold Client harmless against any third party claims brought against Client to the extent alleging that the Service infringes any United States trademark, copyright or patent or misappropriates a United States trade secret, and MaxMD shall pay any damages incurred in connection with such claims. The foregoing obligations are conditioned upon: (i) prompt written notice by Client to MaxMD of any claim, action or demand for which indemnity is claimed; (ii) complete control of the defense and settlement thereof by MaxMD; provided that no settlement of an indemnified claim that admits liability on the part of Client shall be made without the consent of Client, such consent not to be unreasonably withheld or delayed; and (iii) reasonable cooperation by Client in the defense, at MaxMD's request. Client shall have the right, but not the obligation, to participate in the defense against the indemnified claims with counsel of its choice at its own expense.
- 8.2 Mitigation of Infringement Claims.** If the Service, or any portion thereof, becomes, or in MaxMD's reasonable opinion is likely to become, the subject of any infringement claim, then MaxMD may, at its sole option and expense (i) obtain the right for Client to continue using the applicable portion of the Service, (ii) replace or modify, or have replaced or modified, the applicable portion of the Service so that it is non-infringing, or (iii) terminate the Agreement and refund to Client any pre-paid fees paid by Client for that portion of the Initial Term or Renewal Terms actually paid by Client for the infringing portion of the Service following such termination. This Section states MaxMD's entire liability for any claim based upon or related to any alleged infringement of any patent or other Intellectual Property Rights.
- 8.3 Client's Indemnity Obligations.** Client shall indemnify, defend and hold MaxMD and its affiliates and their respective officers, directors, employees, contractors and agents harmless against any third party and governmental claims, investigations, and actions brought against any of the foregoing (and any damages, loses, fines, penalties and costs (including without limitation attorneys' fees and court costs incurred in connection therewith)) for (i) any breach by Supplier or an Authorized User of this Agreement, (ii) any assertion that any PHI or other data or content transmitted or made available through the Service is inaccurate or incomplete, or (iii) any assertion that any Data or other content provided to MaxMD or its Third Party Providers under or in relation to this Agreement (or their use of such Data or content) infringes, misappropriates, was not obtained with patient consent, or otherwise violates any applicable law or regulation or any Intellectual Property Rights or privacy rights of any patient or other third party. The foregoing obligations are conditioned upon: (i) prompt written notice by MaxMD to Client of any claim, action or demand for which indemnity is claimed; (ii) complete control of the defense and settlement thereof by Client; provided that no settlement of an indemnified claim that admits liability on the part of MaxMD shall be made without the consent of MaxMD, such consent not to be unreasonably withheld or delayed; and (iii) reasonable cooperation by MaxMD in the defense, at Client's request. MaxMD shall have the right, but not the obligation, to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

9. Limitation of Liability.

- 9.1 Limitation of Liability.** EXCEPT FOR MAXMD'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.1 (WHICH SHALL BE CAPPED AT TOTAL FEES PAID OR PAYABLE TO MAXMD DURING THE EIGHTEEN MONTH PERIOD PRECEDING THE CLAIM), IN NO EVENT WILL MAXMD'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES EVER EXCEED THE TOTAL FEES PAID OR PAYABLE TO MAXMD DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM, REGARDLESS OF THE FORM OF ACTION (WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE).
- 9.2 Exclusion of Certain Damages.** EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS, AND EXCEPT FOR AMOUNTS PAID BY MAXMD OR SUBSCRIBER, IF ANY, PURSUANT TO A FINAL COURT ORDER OR WRITTEN SETTLEMENT AGREEMENT PURSUANT TO SECTION 8.1 OR 8.3, RESPECTIVELY (REGARDLESS OF HOW SUCH PAYMENT MAY BE CLASSIFIED), IN NO EVENT SHALL EITHER PARTY OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS, AGENTS, SUBCONTRACTORS OR REPRESENTATIVES BE LIABLE HEREUNDER FOR ANY LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL OR OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER OR NOT THE APPLICABLE PARTY HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING AND REGARDLESS OF THE NATURE OF THE CLAIM OR FORM OF ACTION

(WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE). IN ADDITION, MAXMD SHALL NOT BE LIABLE FOR ANY LOSS OF DATA OR OTHER DAMAGES RESULTING FROM ANY DELAY OR DEFECT IN OR NON-DELIVERY OF ANY DATA TRANSMISSIONS OR SERVICE DUE TO THE INTERNET.

9.3 Duty to Mitigate; Limitation of Claims. Each party shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other party's performance or non-performance of this Agreement. No legal proceedings, regardless of form, arising under or relating to this Agreement may be brought by Client more than one (1) year after it first had actual knowledge of the facts giving rise to the cause of action.

10. Miscellaneous.

10.1 Choice of Law; Venue. The validity, construction, and enforcement of this Agreement, and the determination of the rights and duties of the parties, shall be governed by and construed in accordance with the laws of the State of New Jersey (excluding any choice of law principle that would result in the application of the laws of any other jurisdiction). The parties agree that the sole and exclusive jurisdiction and venue for purposes of any and all lawsuits, disputes, causes of action, arbitrations or mediations shall be in any appropriate forum in Fort Lee, New Jersey.

10.2 Public Announcements. Promptly following execution of this Agreement, the parties may issue a press release, the form and substance of which shall be mutually agreeable to the parties, announcing the relationship created by this Agreement. Except as expressly contemplated herein, neither party shall issue any additional press release or public announcement which mentions the other party or the transactions contemplated by this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. After prior review and approval by Client, Client will allow MaxMD during the term of this Agreement to use the trademarks, service marks and logos of Client for purposes of listing Client as a current customer of MaxMD on MaxMD's customer page on the MaxMD extranet website. MaxMD acknowledges and agrees that MaxMD's use of the Client marks shall be in accordance with Client's trademark and service mark guidelines in effect from time to time.

10.3 Force Majeure. Neither party shall be liable to the other, or any other person, for any delay or failure to perform any provision of this Agreement to the extent such delay or failure to perform is caused by an act of God, war, terrorism, or any other extreme event beyond the reasonable control of such party (including, without limitation, the failure of the other party to perform its obligations).

10.4 Insurance. Throughout the Term, MaxMD shall maintain, at its sole cost, a policy or policies of insurance for general liability and professional liability in amounts not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for claims related to the performance of this Agreement and arising during the Term. Promptly upon Client's request, MaxMD will provide Client with a valid certificate of insurance evidencing the foregoing coverage.

10.5 Severability. If any one or more of the provisions in this Agreement or any application of such provision is held to be invalid, illegal or unenforceable in any respect by a competent tribunal, the validity, legality and enforceability of the remaining provisions of this Agreement and all other applications of the remaining provisions will not in any way be affected or impaired by such invalidity, illegality or unenforceability.

10.6 Assignment. Except as otherwise set forth in this Agreement (including, without limitation, MaxMD's use of its Third Party Providers), this Agreement and all rights and obligations hereunder may not be assigned in whole or in part by either party, without the prior written consent of the other party, except that the rights and obligations of MaxMD may be assigned to another entity in connection with the sale of the division or business unit that is primarily responsible for performance of MaxMD's obligations under this Agreement, or a reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of the voting securities and/or assets of MaxMD. Additionally, either party may unilaterally assign, convey or otherwise transfer its rights and obligations to any entity controlled by, controlling, or under common control of such party, or any entity into which such party may be merged or consolidated, or any entity which purchases all or substantially all of the assets of such party; provided such party is not a direct competitor of the other party. "Control" means to have the legal right (directly or through one or more entities) to elect or appoint at least 50% of the voting members of a legal entity's governing body. Any purported assignment in violation of this Section 10.6 shall be null and void.

- 10.7 Notices.** Any notices required or permitted to be given pursuant to this Agreement shall be in writing, delivered (1) in person, (2) by international courier, (3) by first class certified mail, return receipt requested, or its international equivalent, or (4) by facsimile with confirmation of delivery and an extra copy mailed. All such notices shall be addressed to MaxMD or Client at their respective address set forth on the Signature Cover Page or to such other address as may be specified from time to time by notice in writing to the other party. Notice shall be deemed to have been given when received.
- 10.8 Burdens and Benefits.** This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns.
- 10.9 Independent Contractors.** The parties acknowledge and agree that in the performance of their respective duties and obligations hereunder they are acting as independent contractors of each other, and neither party shall represent that an employer/employee, partnership, joint venture, franchisor/franchisee or agency relationship exists between them, nor shall either party have the power, nor will it represent that it has the power, to bind the other party hereto to any contract or agreement. Neither party shall have control over the other party or its representatives with respect to its hours, times, employment, manner or method of performing its obligations under this Agreement.
- 10.10 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 10.11 Captions, Sections, Articles and Exhibits.** The premises, captions and headings in this Agreement are for convenience of reference only and may not be referred to in the construction or interpretation of this Agreement. Unless otherwise noted, any reference in this Agreement to an “Exhibit,” a “Section” or an “Article” refers, respectively, to exhibits, sections or articles in this Agreement. The content and terms of all Exhibits (including any Exhibits that are not completed as of the execution of this Agreement, but are subsequently agreed upon by the parties, and any amended Exhibits) are incorporated into this Agreement by reference.
- 10.12 Entire Agreement.** This Agreement (including any agreement attached as or referred to in an Exhibit or an addendum) constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior statement or writing not a part of this Agreement, and neither party shall be bound by any prior or contemporaneous representation, statement, promise, warranty, covenant, or agreement pertaining thereto unless set forth in this Agreement. If there is a conflict between the terms and conditions of this Agreement and those of any Exhibit, the terms and conditions of this Agreement control over those of the Exhibit. However, to the extent possible, the parties shall construe the terms and conditions of this Agreement and the Exhibits as complementary to each other.
- 10.13 Further Assurances.** The parties hereto further agree that they shall take any and all necessary steps and sign and execute any and all necessary documents or agreements required to implement the terms of this Agreement.
- 10.14 Export Compliance.** Client acknowledges and agrees that the Service and related technology subject to this Agreement are subject to the export control laws and regulations of the United States, and Client agrees to comply with such laws and regulations. Client agrees that it shall use its best efforts to ensure that the Service and related technology are not (1) sold, transferred or diverted to any U.S. sanctioned or embargoed country (including, but not limited to, Cuba, Iran, Sudan and Syria), unless authorized by MaxMD and only with a valid U.S. export license or regulation; (2) sold, transferred, or diverted to any person, firm, or other entity listed in the U.S. Department of Commerce Denied Persons List or Entity List, the U.S. Department of Treasury’s Specially Designated Nationals List, or the U.S. Department of State’s Debarred Parties listing; (3) sold, transferred, or diverted to any nuclear weapons, nuclear power, nuclear research, chemical/biological weapons, or missile/rocket technology end-user or end-use; or (4) sold, transferred, or diverted in violation of any other applicable import/export laws, regulations, licenses, or government orders. Client shall promptly advise MaxMD in writing of any known or suspected sale, transfer, or diversion in violation of the foregoing. Client understands that MaxMD’s performance under this Agreement is subject to MaxMD’s receipt of all necessary licenses, permits, or approval from all relevant governments or their agencies for the import or export of the Service and that MaxMD shall be free from all liabilities for deficient performance under this Agreement to the extent such deficiency is caused by the non-receipt or late receipt of such

licenses, permits or approval. The obligations of this Section as to these laws shall survive any termination of this Agreement.

10.15 Waivers. No term or provision of this Agreement will be deemed waived, and no breach will be deemed excused, unless such waiver is in writing and signed by the party claimed to have waived.

10.16

**Attachment 1 to Exhibit A
Defined Terms**

1. **“Acceptable Use Policy”** means the policy established by MaxMD or its Third Party Providers and presented to Client or an Authorized User which governs Client’s and/or Authorized Users’ access and use of the Service or Third Party Application.
2. **“Authorized User”** means person(s) authorized, enabled or permitted under Client’s subscription to author, create, generate, send and/or receive Direct Secure Messages through the Service, either independently or acting as agent for others and (i) whose identity is established by or on behalf of Client as provided below; and (ii) who enters into an agreement directly with Client and/or an Acceptable Use Policy with MaxMD that governs his or her access to the Service on terms consistent with this Agreement. An Authorized User may include, as applicable, (i) in the case of Personal Health Record Organizations (“PHRs”), individual patients who have provided the PHR with any required patient consent; (ii) users of, or subscribers to, Client’s electronic health record system of record (“EHR System”) or any electronic Healthcare Information Technology (“HIT”) application or system linked through the Service, and (iii) users of, or subscribers to, any healthcare service organization, business associate or provider registered to use the Direct Secure Messaging Service under Client’s subscription, whether provided by MaxMD, either directly through MaxMD’s developed products or through application programming interfaces or any other technical configuration provided and/or supported by MaxMD. All Authorized Users shall have a unique login and password, whether maintained by MaxMD, Client or any agent of Client in accordance with 45 CFR Part 160 and Part 164, Subparts A and C and standard 164.312(a)(1) (Access Control) and each Authorized User’s identity must be established in accordance with NIST 800-63-3 LOA 3 and/or IAL2 reported as such to MaxMD, the Registration Agent and the Certificate Authority in all cases for the purpose of creating a valid audit trail regarding the exchange of PHI, as required by HIPAA. In no instance does the Direct Protocol provide for, and MaxMD does not allow, the anonymous exchange of health information through proxies.
3. **“Confidential Information”** means all documents, inventions, designs, research and development, products and specifications, employee information, Electronic Protected Health Information ePHI, patient information, client and supplier information, trade secrets (as defined under applicable law), business plans and financial information, market information, reports, data, records, forms and other materials or information obtained by either party from the other party prior to or during the Term: (i) that have been marked as confidential; (ii) whose confidential nature has been made known to the receiving party; or (iii) that due to their character and nature, a reasonable person under like circumstances would recognize to be or otherwise treat as confidential. Notwithstanding any other provision of this Agreement, the Service, Platform and the fees charged by MaxMD shall constitute the Confidential Information of MaxMD and the Data shall, as between the parties, constitute the Confidential Information of Client.
4. **“Data”** means clinical data and related emails transmitted by or through the Service by Authorized Users, including through use of a private key. The Data may include PHI or ePHI.
5. **“Direct Certificates”** shall have the meaning set forth in the Agent Registration Agreement.
6. **“Direct Secure Messages”** shall have the meaning set forth in the Agent Registration Agreement.
7. **“Documentation”** means any then-current, commercially available user documentation, user guides and training materials provided by MaxMD with respect to the Service including the MaxMD Certificate Practices Statement described in the Agent Registration Agreement.

8. **“ePHI”** shall mean electronic PHI.
9. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended.
10. **“HITECH”** means the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, as amended.
11. **“Intellectual Property Rights”** means, on a world-wide basis, any and all (i) rights associated with works of authorship including, without limitation, copyrights, copyrightable rights, moral rights and mask work rights; (ii) trademark, service mark and trade name rights and any similar rights recognized under applicable law; (iii) trade secret rights; (iv) patents and patentable rights; (v) rights with respect to inventions, discoveries, improvements, know-how, formulas, algorithms, processes, technical information and other technology; (vi) other intellectual and industrial property rights of every kind or nature, whether arising by operation of law, contract, license or otherwise; and (vii) international, national, foreign and state registrations, applications for registration and any renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisions, reissues, substitutions and reexaminations), all goodwill associated therewith, and all benefits, privileges, causes of action and remedies relating to any of the foregoing (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations relating thereto; and to settle and retain all proceeds from any such actions).
12. **“MaxMD Mobile Application”** means the MaxMD patient-facing mobile application available for Android and iOS devices, as more fully described at <https://www.maxmdirect.com/info/products-services/App>.
13. **“MaxIntegration Service”** means MaxMD’s proprietary MaxIntegration™ Service subscribed to in a Sales Order which allows for the transformation of clinical data from supported data sources and in supported data formats.
14. **“PHI”** means protected health information, as defined by HIPAA.
15. **“Privacy Laws”** means HIPAA, HITECH and any other U.S. federal or state privacy or confidentiality laws applicable to Client’s or an Authorized User’s use of the Service, or MaxMD’s delivery of the Service.
16. **“Professional Services”** has the meaning set forth in Section 1.1 of Attachment 2.
17. **“Sales Order”** means MaxMD’s form of sales order or other ordering document that is signed by both parties and references this Agreement, which shall include an identification of the Service being provided to Client, the applicable Fees and Implementation Checklist. MaxMD’s acceptance of any Sales Order is expressly conditioned upon Client’s agreement that any terms different from or in addition to the terms of the Agreement and such Sales Order, whether communicated orally or contained in any purchase order, acknowledgment, confirmation, or other writing, irrespective of timing, shall not form a part of the Agreement or Sales Order, even if Client purports to condition its acceptance of a Sales Order on MaxMD’s agreement to such different or additional terms. All such additional and contrary terms are hereby expressly rejected.
18. **“Service”** means (i) MaxMD’s proprietary subscription-based service(s) identified in a Sales Order; and (ii) any proprietary code, application programs and other technology used to provide the Service, including all associated user interfaces and knowledge bases provided by MaxMD.
19. **“Statement of Work”** has the meaning set forth in Section 1.1 of Attachment 2. MaxMD’s acceptance of any Statement of Work Order is expressly conditioned upon Client’s agreement that any terms different from or in addition to the terms of the Agreement and such Statement of Work, whether communicated orally or contained in any purchase order, acknowledgment, confirmation, or other writing, irrespective of timing, shall not form a part of the Agreement or Statement of Work, even if Client purports to condition its acceptance of a Statement of Work on

MaxMD's agreement to such different or additional terms. All such additional and contrary terms are hereby expressly rejected.

20. "**Third Party Provider**" means MaxMD's vetted providers, licensors and partners whose services and/or solutions may be included in the Service or offered as an addition to the Service ("**Third Party Applications**").

Attachment 2 to Exhibit A

Professional Services Terms and Conditions

1. Professional Services.

1.1 Statements of Work. Client hereby retains MaxMD to provide the professional and other services ("Professional Services") more fully described in each mutually agreed Statement of Work to this Agreement (each, a "Statement of Work") executed by the parties from time to time, and MaxMD agrees to perform such Professional Services. In the event of a conflict between the terms and conditions of this Agreement and a Statement of Work, the terms and conditions of this Agreement shall prevail unless the Statement of Work expressly states that it is amending a provision of this Agreement.

1.2 Performance of Services. MaxMD shall provide personnel with sufficient technical and professional skills and experience to perform the Professional Services. MaxMD will use commercially reasonable efforts to meet each milestone, schedule and due date on the date specified in the Statement of Work. MaxMD shall inform Client of any actual or anticipated delays which come to its attention.

1.3 Client Responsibilities. Client agrees to cooperate with MaxMD in the performance of the Professional Services, including without limitation, by (i) appointing a person under each Statement of Work with the authority to bind Client and the necessary expertise to provide professional and prompt consultation and liaison with MaxMD; (ii) timely responding to requests for information and feedback; (iii) providing needed materials and information in a usable format; and (iv) otherwise timely complying with its obligations under this Agreement and each Statement of Work.

1.4 Representations and Warranties. MaxMD represents and warrants that the Professional Services will be performed in a professional and workman-like manner. If a Statement of Work provides for MaxMD to provide a software or similar deliverable (a "Deliverable") that meets mutually agreed specifications for such Deliverable specified in such Statement of Work ("Specifications"), MaxMD represents and warrants that such Deliverable shall provide the functionality described in the Specifications for a period of sixty (60) days following delivery. In the event of a breach of the foregoing warranties, MaxMD shall at its option, and as Client's sole and exclusive remedy: (i) re-perform the nonconforming Professional Services or correct the non-conforming Deliverable, or (ii) if neither of the foregoing is commercially practical, refund the fees paid for only the non-conforming Professional Services for the period of time the Professional Services were not provided as warranted or the fees paid for that portion of the Deliverable that does not perform as warranted. Notwithstanding the foregoing, MaxMD will have no obligation to provide any such remedy if the non-conformity is caused by: (i) use of the Professional Services or Deliverable other than in accordance with this Agreement, applicable law and the Documentation; (ii) any error, defect or non-conformance which cannot be reproduced by MaxMD or caused by someone other than MaxMD; (iii) modification of the Professional Services or Deliverable by anyone other than MaxMD; or (iv) any third party hardware, software, databases or systems not provided by MaxMD, which shall be the responsibility of the provider of such hardware, software, databases or systems. To receive warranty remedies, Client must promptly report deficiencies in writing to MaxMD, but no later than thirty (30) days after the first date the deficiency is identified by Client.

1.5 Change Orders. From time to time during the term of a project under a Statement of Work, new information may surface that may necessitate a change in business requirements resulting in a change in project scope and/or changes in the estimated level of effort, project timeline, or scope of Professional Services. Either party may propose a requested change to a Statement of Work ("Requested Change") by delivering written notice of such Requested Change to the other party. Requested Changes, and any amendments necessary to this Agreement in connection therewith, shall be negotiated in good faith by the parties. A Requested Change will be implemented only if set forth in a change order to this Agreement executed by authorized representatives of both parties ("Change Order").

2. Compensation and Expenses.

2.1 As compensation for the Professional Services, Client will pay to MaxMD the fees, charges and other compensation set forth in each Statement of Work. In addition, Client will reimburse MaxMD for any pre-approved out-of-pocket expenses incurred by MaxMD in performing the Professional Services including, but not limited to, travel and lodging expenses, long distance calls, and costs of materials and supplies. MaxMD shall invoice Client as specified in the Statement of Work for any Professional Services and Deliverables. Client shall pay invoices within thirty (30) days following receipt of the invoice. Any payment not made when due shall bear interest at the lesser of (a) 1.5 percent per month, or (b) the maximum monthly interest rate chargeable under applicable law. In the event MaxMD is required to initiate any legal action to enforce the provisions of this Section 2, MaxMD shall be entitled to recover, in addition to any applicable damages, reasonable attorneys' fees and other costs of collection.

3. Work Product.

3.1 Independently Developed IP. Each party shall retain exclusive ownership of all intellectual and proprietary rights existing as of the Effective Date or independently developed by such party outside the scope of this Agreement and without use of the other party's Confidential Information, together with all modifications, enhancements, and improvements thereto.

3.2 Work Product. Except as provided in Section 3(c), all custom work product and deliverables developed or produced by MaxMD specifically for Client in the performance of the Services ("Work Product") shall be owned by Client upon payment and shall be deemed "works for hire" under The Copyright Act of 1976, as amended. To the extent the Work Product does not constitute a work for hire under applicable law, MaxMD hereby assigns to Client all rights of MaxMD in and to such Work Product, except as set forth in Section 3(c).

3.3 MaxMD and Third Party Intellectual Property. Notwithstanding the provisions of Section 3(b), MaxMD may utilize certain knowledge, information, know-how, inventions, discoveries, developments, and innovations developed by MaxMD, including, but not limited to, certain techniques, procedures, methods, and know-how (collectively, "MaxMD Property") in the performance of Services under this Agreement. With respect to any MaxMD Property or third party intellectual property that is merged into or otherwise made a part of any Work Product hereunder, MaxMD or the applicable licensor shall continue to own such MaxMD Property or third party intellectual property, but subject to Client's compliance with the terms of this license, Client shall have a non-exclusive, paid-up, transferable right and license to use such MaxMD Property or third party intellectual property solely as incorporated with the other Work Product.

3.4 Additional Actions. At either party's request, during and after the Term, the other party will assist and cooperate with the requesting party and take such further acts as may be reasonably requested to enable the requesting party to acquire, transfer, maintain, perfect and enforce such party's intellectual property rights.

4. Non-Solicitation Covenants.

4.1 Non-solicitation of Personnel. During the term of this Agreement and for a period of one (1) year following termination of this Agreement for any reason, Client agrees to not, directly or indirectly, through any affiliate, person or entity, solicit or attempt to solicit for employment, hire or retain (whether on a full-time, part-time or consulting basis) any personnel of MaxMD assigned to perform Services hereunder or whose resume(s) have been provided to Client for review.

4.2 Remedies. Each party agrees that damages at law for any violation of the covenants in this Section 4 would not be an adequate or proper remedy and that should such party violate or threaten to violate any of the provisions of such covenants, the other party or its successors or assigns shall be entitled to obtain a temporary or permanent injunction against such party in any court having jurisdiction (without any obligation to post bond) prohibiting any further violation of such covenants, in addition to any award or damages (compensatory, exemplary or otherwise) for such violation.

4.3 Partial Enforcement; Tolling; Attorneys' Fees and Court Costs. The parties have attempted to limit the rights of each party to solicit or hire only to the extent necessary to protect each party from unfair competition. Each party agrees that if the scope of enforceability of any of these covenants is in any way disputed at any time, a court or other arbiter of fact may modify and enforce such covenants to the extent that it believes to be reasonable under the circumstances existing at the time. In the event a party initiates any proceeding in an attempt to confirm or enforce its rights in this Section 4, (i) the parties agree that the period during which the other party is prohibited from disclosing Confidential Information, or soliciting or hiring, as described above will be tolled during any period of violation of the covenants set forth in this Section 4 and during the period of time in which such proceeding is pending, and (ii) the prevailing party shall be entitled to recover, in addition to any applicable damages, reasonable attorneys' fees and applicable court costs and expenses.

Attachment 3 to Exhibit A

Service Levels

1. Definitions.

1.1 "Scheduled Maintenance Window" means the window during which weekly scheduled maintenance of the Service may be performed. The Scheduled Maintenance Window is currently between the hours of Friday 9:00 p.m. to Saturday 5:00 a.m. Eastern time.

1.2 "Emergency Maintenance" means any time outside of the Scheduled Maintenance Window that MaxMD is required to apply urgent patches or fixes, or undertake other urgent maintenance activities. If Emergency Maintenance is required, MaxMD will contact Client and provide the expected start time and the planned duration of the Emergency Maintenance and if MaxMD expects the Service to be unavailable during the Emergency Maintenance.

1.3 "System Availability" means the percentage of total time during which the Service is available to Client, excluding Scheduled Maintenance Windows and Emergency Maintenance.

2. Service Credits.

2.1 "Service Credit" means the percentage of the monthly subscription Fees paid or payable for the Service that is credited to Client for a validated claim associated with a failure of the Service to meet the System Availability during a month.

2.2 In no event shall Client be entitled to receive a Service Credit for any given month that exceeds 50% of the monthly subscription fee for such month.

2.3 Any Service Credits earned by Client hereunder will be applied to the subscription Fees owed by Client for the next Service subscription period for which MaxMD Service Credits apply. If Service Credits cannot be applied to future subscription Fees because this Agreement has terminated, such Service Credits shall automatically expire and Client shall not be entitled to reimbursement or payment of any amounts for such expired Service Credits.

3. Claims for Service Level Credits.

3.1 Service Levels shall not be measured for purposes of determining Service Credits during the first full calendar month following implementation of the Service for production use, and no Service Credits shall be due for such period.

3.2 Client must notify MaxMD Client Support within 5 business days of the beginning of each calendar month during the Term if Client believes it is entitled to a Service Credit for the previous month.

3.3 For all claims subject to validation by MaxMD, MaxMD will use log files, database records, audit logs, and any other information available to validate claims and make a good faith judgment on the applicability of Service Credits to said incident.

3.4 In the event that more than one aspect of a Service is affected by the same root cause, the single Service Credit applicable to such Service Level failure may be claimed and no other claim will be validated or otherwise allowed for that event.

3.5 The remedies set forth herein represents Client's sole and exclusive remedy for MaxMD's breach of the Service Levels defined in this Exhibit.

4. Exclusions.

4.1 Client shall not have any remedies under this Exhibit to the extent any failure to meet Service Levels is due to: (i) use of the Service outside the scope described in the Agreement; (ii) Client equipment, the Internet and/or third party software, hardware or network infrastructure outside of MaxMD's data center and not under the direct control of MaxMD; (iii) failure of Client to meet the configuration requirements for Client equipment set forth in the Documentation; or (iv) a force majeure event.

5. SERVICE LEVELS.

The following Service Levels will apply .

5.1 System Availability Service Level

5.1.1 MaxMD will provide a Service Level of 99.99% System Availability (e.g. not unavailable more than 4.38 minutes per month) during each calendar month, excluding the Scheduled Maintenance Window and Emergency Maintenance.

5.1.2 Remedy If the System Availability is less than 99.99%, and if Client has fulfilled all of its obligations under the Agreement and this Exhibit, MaxMD will provide Client with a Service Credit for the month in which the failure to meet the System Availability Service Level occurred (following the first full calendar month following implementation). The Service Credit will be calculated in accordance with the table below.

% Of System Availability per Calendar Month	Service Credit
<99.99% :	25%
<99.00% :	50%

Exhibit B
Agent Registration Agreement

THIS AGENT REGISTRATION AGREEMENT (this "Agent Registration Agreement") is made and entered into as of _____, 202_ (the "Effective Date"), by and between Park Avenue Capital LLC, d/b/a MaxMD, a Georgia limited liability company, with offices at 5 Compton Way, Bridgewater, NJ 08807, and _____, as a Registering Agent ("Registering Agent"), with its principal place of business at _____.

Roles

In this Agent Registration Agreement, the following terms shall have the meanings set forth below.

"Registration Authority or "MaxMD" – means MaxMD, in its role as registration authority.

"Registering Agent" means the entity set forth above in this Agent Registration Agreement.

"Trusted Agent" – means members of Registering Agent's team that have been trained and designated to perform the duties of the Trusted Agent on behalf of Registering Agent.

"Vetted Authorized User" – means an individual applying for a Direct Certificate or Direct mdEmail account under Registering Agent's subscription under this Agent Registration Agreement.

Certain Registering Agent customers are designated as "Trusted Agents". "Trusted Agents" are authorized by Registering Agent to gather documentation in relation to the issuance of a digital certificate. All defined terms referenced in this Agent Registration Agreement appear in MaxMD's Certificate Practices Statement ("CPS") located at <https://www.directmdemail.com/documents/DirectPolicy> and the Registration Practices Statement ("RPS") at <https://www.directmdemail.com/documents/DirectPolicy>, which outline the legal, commercial and technical principles and practices that Registration Authority (MaxMD) employs and requires Registering Agents and Trusted Agents to employ in providing certification services. This document is a statement of the practices that MaxMD uses in approving, issuing, using and otherwise managing X.509 Digital Certificates and maintaining a Certificate-based public key infrastructure (PKI) applicable to the Certificates MaxMD uses. The CPS also defines the underlying certification processes for subscribers or Vetted Authorized Users of certificates and describes MaxMD's Certification Authority ("CA") and certificate repository operations, practices and requirements. The MaxMD CPS is a public statement of the practices of MaxMD and serves to notify all parties involved in the MaxMD PKI of their roles and responsibilities. It is imperative that Registering Agent and all Trusted Agents and Vetted Authorized Users and/or subscribers understand their responsibilities as outlined in the CPS. MaxMD has designated Registering Agent as a Registering Agent with the authority to designate trained team members as Trusted Agents to perform the gathering of documentation and vetting in accordance with this Agent Registration Agreement. MaxMD may update the CPS and RPS from time to time. MaxMD will post any changes to the CPS or RPS on the MaxMD website.

MaxMD Direct Health Information Service Provider ("HISP") will not provide certificates to a person or entity that is on a governmental denied list maintained by the United States or that is located in a country with which the laws of the United States prohibit doing business.

Organizational certificate applicants are required to include name, address, domain name, and evidence of the organization's existence in the certificate application. The requesting organization must be a HIPAA covered entity, a HIPAA business associate, or a healthcare-related organization that treats protected health information with privacy and security protections that are equivalent to those required by HIPAA. Each organizational certificate must represent a legally distinct entity. Registering Agent may rely on representation from the organization to verify the organization's status as a valid legal entity in good standing for purposes of qualifying for a Direct Certificate.

Registering Agent shall require each Trusted Agent to verify the included applicant's name and address using a reliable third-party database, a government database, or through Trusted Agent's communication with the entity or jurisdiction responsible for the organization's creation or recognition. If the Trusted Agent cannot use these sources to verify the name and address, then the Trusted Agent may verify the name and address using official company documentation that is submitted by the applicant, such as a business license, filed or certified articles of incorporation/organization, tax certificate, corporate charter, official letter, sales license, or other acceptable documents outlined in the RPS.

If the Trusted Agent is unable to verify any of the Vetted Authorized User's or subscriber's name, address, date of birth, or government issued photo ID number, the Trusted Agent shall refuse to verify or authenticate the identity of the entity or individual. The name of each Vetted Authorized User (or Direct message recipient/sender) must be delivered to Registering

Agent before the Vetted Authorized User will be provided with access to Direct Secure Messaging services.

The Registering Agent shall, and shall require Trusted Agents to, maintain records of the identity verification process, including (i) Vetted Authorized User's (Recipient/Sender's) name, address, date of birth, government issued photo ID type and number, (ii) name of Trusted Agent performing identity proofing, (iii) date and time verification performed, and (iv) source used to perform verification (e.g., DMV, e-Verify, credit bureau).

Registration Authority may, at any time and from time to time, audit any or all Vetted Authorized User identity verification records, and Trusted Agent shall ensure that, upon reasonable advance notice, Registering Agent and Registration Authority will be provided with access to such records. The Trusted Agent should securely send this information to the Registering Agent and the Registering Agent should securely send this information to Registration Authority.

If the certificate asserts an organizational affiliation between an individual and an organization, then the Trusted Agent will obtain documentation from the organization that recognizes the affiliation and obligates the organization to provide updates if the affiliation changes.

For an LOA 3 or IAL 2 Direct Certificate, information is verified using either an in-person or remote vetting process. These respective processes are documented in section 3 of the current DirectTrust CP which can be found at <https://www.directmdemail.com/documents/DirectPolicy>

Registering Agent shall indemnify and hold harmless MaxMD, and its parent companies, subsidiaries, directors, officers, employees, agents, and contractors for any breach by Registering Agent or any Trusted Agent of this Agent Registration Agreement and will require Vetted Authorized Users (Senders/Recipients) to comply with their responsibilities as set forth in the CPS, including Section 9.9.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agent Registration Agreement as of the Effective Date.

REGISTERING AGENT

SIGNATURE _____

PRINTED NAME/ TITLE _____

DATE _____

PARK AVENUE CAPITAL, LLC d/b/a "MAXMD"

SIGNATURE _____

PRINTED NAME/TITLE _____

DATE _____

Exhibit C
Business Associate Agreement

This Business Associate Agreement (“BA Agreement”) is effective as of [REDACTED], 202[REDACTED] (the “Effective Date”) and is entered into by and between Park Avenue Capital, LLC, d/b/a “MaxMD” (“MaxMD” or “Business Associate”), and [REDACTED] (“Covered Entity” or “Client”).

WHEREAS, Business Associate provides certain functions, activities, or services for or on behalf of Covered Entity pursuant to a Master Service Agreement between the parties and effective as of the date hereof (the “Agreement”);

WHEREAS, Business Associate creates, receives, maintains, or transmits Protected Health Information (as defined below) in order to provide the services to Covered Entity under the Agreement;

WHEREAS, the Privacy Rule and Security Rule require Covered Entity and Business Associate to enter into a written contract containing satisfactory assurances that the Business Associate will appropriately safeguard Protected Health Information;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows.

1. Definitions.

The following terms shall have the meanings set forth in this Article 1:

“**BA Agreement**” means this Business Associate Agreement between Client and MaxMD.

“**Breach Notification Rule**” means 45 CFR Part 164, Subpart D.

“**Breach**” has the same meaning as the term “breach” in 45 CFR § 164.402.

“**Business Associate**” means MaxMD.

“**Covered Entity**” means Client.

“**CFR**” shall mean the Code of Federal Regulations.

“**Disclosure of PHI**” means the release, transfer, provision of, access to, or divulging in any other manner, of PHI outside the entity holding the information per 45 CFR § 160.103.

“**Electronic Protected Health Information**” or “**ePHI**” shall have the same meaning given to the term “electronic protected health information” in 45 CFR § 160.103, and is limited in this BA Agreement to the ePHI created, transmitted, maintained or received by Business Associate from or on behalf of Client.

“**HIPAA**” means, collectively, the Health Insurance Portability and Accountability Act of 1996, HITECH, and the regulations promulgated thereunder, as each may be amended from time to time.

“**HITECH**” means the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.

“**Individual**” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“**Privacy Rule**” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” has the same meaning as the term “protected health information” in 45 CFR §

160.103, and is limited in this Agreement to the PHI created, transmitted, maintained or received by Business Associate from or on behalf of Client and shall also include ePHI.

“**Required by Law**” has the same meaning as the term “required by law” in 45 CFR § 164.103.

“**Secretary**” means the Secretary of the Department of Health and Human Services or his designee.

“**Security Incident**” has the same meaning as the term “security incident” in 45 CFR § 164.304.

“**Security Rule**” means those requirements set forth in 45 CFR Part 164, Subpart C.308, 164.310, 164.312, 164.314, and 164.316

“**Unsecured PHI**” has the same meaning as “unsecured protected health information” in 45 CFR § 164.402.

“**Use of PHI**” means the sharing, employment, application, utilization, examination, or analysis of PHI within an entity that maintains such information per 45 CFR § 160.103.

Capitalized terms not otherwise defined in this BA Agreement shall have the same meanings as those terms have in the Privacy Rule, Breach Notification Rule, Security Rule, HIPAA, or the Agreement; provided, however, that if any such capitalized term defined in the Agreement conflicts with a definition given for such term in the Privacy Rule, Breach Notification Rule, Security Rule or HIPAA, then the definition given for such term in the Privacy Rule, Breach Notification Rule, Security Rule or HIPAA (as applicable) shall govern.

2. Obligations and Activities of Business Associate.

- A. Business Associate agrees not to Use or to Disclose PHI other than as permitted or required by the Agreement or this BA Agreement or as permitted or Required by Law.
- B. Business Associate agrees to use appropriate and reasonable safeguards designed to prevent unauthorized Use or Disclosure of PHI other than as provided for by the Agreement or this BA Agreement. In particular, Business Associate agrees to comply with the Privacy Rule and Security Rule with respect to all ePHI transmitted by or on behalf of Client through the Service.
- C. Business Associate provides many mechanisms by which Covered Entity can safeguard PHI, which, when properly utilized by Covered Entity, are designed to ensure compliance with the provisions of the Privacy Rule and the Security Rule. Business Associate may, upon request, advise Covered Entity as to appropriate measures Covered Entity could take with respect to Business Associate’s services to better ensure compliance with the Privacy Rule and the Security Rule. However, Covered Entity agrees and understands that the Covered Entity is independently responsible for HIPAA compliance for the privacy and security of its PHI, including ePHI, in its possession or control or that it receives from outside sources.
- D. Business Associate agrees to use commercially reasonable efforts to mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate of an unauthorized Use or Disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of this BA Agreement or HIPAA.
- E. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to substantially the same restrictions and conditions that apply to Business Associate under this BA with respect to PHI.
- F. To the extent applicable, all PHI maintained by Business Associate for Covered Entity will be available to Covered Entity in a time and manner that reasonably allows Covered Entity to comply with the requirements under 45 CFR § 164.524. Business Associate shall not be obligated to provide any such information directly to any Individual or person other than Covered Entity.
- G. Business Associate agrees to document unauthorized Disclosures of PHI and information related to such unauthorized Disclosures for accounting purposes as required under 45 CFR § 164.528, but only to the extent that

(i) Business Associate is actually aware of such unauthorized Disclosures and (ii) such unauthorized Disclosures are of the type of disclosures subject to documentation for accounting under 45 CFR § 164.528.

- H. Covered Entity or an Individual may request that Business Associate make an amendment to PHI which is maintained by Business Associate, if any. Business Associate and Covered Entity must agree to the form of amendment and amendment implementation timeline prior to Business Associate's making any amendment to such PHI.
- I. Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the Use and Disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary within 30 days of a verified request or as directed by the Secretary, for purposes of the Secretary's determining Covered Entity's or Business Associate's compliance with the Privacy or Security Rules.
- J. Business Associate maintains a Health Information Breach Investigation and Response Policy and Procedure ("Breach Policy") which sets forth Business Associate's policies and procedures for investigating, responding to and reporting Breaches of unsecured PHI in compliance with HIPAA and other applicable laws and regulations. In accordance with such Breach Policy, Business Associate will, upon discovery of a Breach, investigate and assess the potential impact of the Breach (including any affected individuals), mitigate to the extent possible known harm to affected individuals, and determine whether notification to affected individuals, the Secretary or other persons is required under the Breach Notification Rule. If Business Associate determines that notification to affected individuals, the Secretary or other persons is required under the Breach Notification Rule, Business Associate shall notify Client of the Breach without unreasonable delay and in any event within thirty (30) days following discovery of the Breach. Business Associate shall also provide Client with the identification of each individual whose unsecured PHI has been or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach and any other available information that Client is required to include in notification to affected individuals under the Breach Notification Rule. Such information will be provided at the time of notification of Client of the Breach or promptly thereafter as information becomes available. In addition, Business Associate shall (i) take prompt action to implement a corrective action plan to address any deficiencies which are within the Business Associate's actual control; and (ii) take such further actions pertaining to such Breach due to a default by Business Associate as may be required by HIPAA or other applicable law. To the extent such Breach is caused by breach of Business Associate's obligations under this BA Agreement, Business Associate agrees to pay the costs of investigation, notification, and provision of consumer protections such as credit monitoring for a period of one (1) year following notification, subject to the limitations of liability set forth in the Agreement.

3. Permitted Uses and Disclosures by Business Associate.

Except as otherwise limited in this BA Agreement or by HIPAA or the Agreement:

- A. Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Client or its Authorized Users provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by Client.
- B. Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate and its obligations under the Agreement. Business Associate may Disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate provided that: (i) such Disclosure is Required by Law or reasonably necessary to carry out its obligations under the Agreement; or (ii) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- C. Business Associate may use PHI to report violations of law to appropriate federal and state authorities consistent with 45 CFR § 164.502(j)(1).

4. Obligations of Covered Entity.

- A. Client is responsible for independently complying with the Privacy Rule and the Security Rule and shall use Business Associate's products and services in a manner that complies with HIPAA and other applicable law. Client shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR § 164.520 to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
- B. Client shall notify Business Associate of any changes in, or revocation of, any permission by an Individual to Use or Disclose PHI to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- C. Client shall notify Business Associate of any restriction on the Use or Disclosure of PHI that Client has agreed to in accordance with 45 CFR § 164.522, and HITECH § 13405(a) to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.
- D. Client shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under HIPAA or other applicable law if done by any of them.
- E. Client agrees not to use Business Associate's services for the transmission or storage of ePHI except for the classes and types of ePHI meeting the definition of ePHI in Section 1 of this BA Agreement.

5. Term and Termination.

- A. **Term.** This BA Agreement shall be effective as of the Effective Date and shall terminate when the requirements of Section 5.D. below are satisfied.
- B. **Termination for Cause by Covered Entity.** Upon Client's knowledge of a material breach of this Agreement by Business Associate, Client shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within 30 days from the date that Client provides notice of such breach to Business Associate, then, from and after the end of the thirty (30) day cure period, Client shall have the right to immediately terminate this Agreement upon written notice to Business Associate.
- C. **Termination by Business Associate.** This BA Agreement may be terminated by Business Associate upon 60 days prior written notice to Client in the event that Business Associate believes that the requirements of any law, legislation, consent decree, judicial action, governmental regulation or agency opinion, enacted, issued, or otherwise effective after the date of this BA Agreement and applicable to PHI or to this BA Agreement, cannot be met by Business Associate in a commercially reasonable manner and without significant additional expense.
- D. **Effect of Termination.** Except as set forth in this Section D, upon termination of this BA Agreement for any reason, within 90 days of the request of Client, Business Associate shall make available or destroy all PHI received from Client in its possession or created or received by Business Associate on behalf of Client and in Business Associate's possession. Business Associate shall not retain any copies of the PHI. This shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. If Business Associate determines that returning or destroying the PHI is infeasible or not commercially practical, Business Associate shall, within ten (10) business days, provide to Client written notification of the conditions that make return or destruction infeasible or impractical. In such case, Business Associate shall extend the protections of this Agreement to such PHI and limit further use and disclosures of such PHI to only those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. Miscellaneous.

- A. **Regulatory References.** A reference in this BA Agreement to a section in HIPAA shall be a reference to such section currently in effect, as may be updated, amended or modified from time to time.

- B. **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA and all subsequent laws and regulations bearing on the subject matter of this Agreement.
- C. **Survival.** The respective rights and obligations of Business Associate under Section 5.D. of this BA Agreement shall survive the termination of this BA Agreement.
- D. **Interpretation.** Any ambiguity in this BA Agreement shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA. In the event of a conflict between the terms of this Agreement and the Agreement, the terms of this BA Agreement shall control.
- E. **Notice.** All notices, requests, consents and other communications hereunder will be in writing, will be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and will be either (i) delivered by hand, (ii) made by facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered mail or certified mail, return receipt requested, postage prepaid.

If to Business Associate:

MaxMD
 c/o Park Avenue Capital, LLC
 5 Compton Way
 Bridgewater, NJ 08807
 ATTN: Manager
 FAX: (201) 482-5925

If to Client:

 ATTN: [role]

- F. **Severability.** If any portion or provision of this BA Agreement is, to any extent, declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this BA Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of this BA Agreement will be valid and enforceable to the fullest extent permitted by law.
- G. **No Waiver of Rights, Powers and Remedies.** No failure or delay by a Party hereto in exercising any right, power or remedy under this BA Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies.
- H. **Governing Law.** This BA Agreement will be governed by and construed in accordance with the laws of the State of New Jersey.
- I. **Entire Agreement.** This BA Agreement and the terms of the Agreement set forth the entire understanding of the parties with respect to the subject matter set forth herein and supersedes all prior agreements, arrangements and communications, whether oral or written, pertaining to the subject matter hereof.
- J. **Counterparts.** This BA Agreement may be executed by facsimile signature and in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one in the same agreement.

- K. **Independent Contractors.** The parties are independent contractors and nothing in this BA Agreement creates or is intended to create an agency relationship.

- L. **No Third Party Beneficiaries.** Nothing express or implied in this BA Agreement conveys or is intended to convey any rights, remedies, obligations or liabilities to any party other than Client or Business Associate or their respective successors or assigns.

IN WITNESS WHEREOF, Client and Business Associate have executed this Agreement as of the latter of the dates set forth below (“Effective Date”).

[CLIENT]

SIGNATURE _____

PRINTED NAME/ TITLE _____

DATE _____

PARK AVENUE CAPITAL, LLC

SIGNATURE _____

PRINTED NAME/TITLE _____

DATE _____