

**GENERAL TERMS & CONDITIONS
OF THE
SEVOCITY® SERVICES AGREEMENT**

The terms set forth below are the General Terms & Conditions which constitute part of the SEVOCITY® Services Agreement between Conceptual MindWorks, Inc. (“CMI”) and the party identified in the Activate SEVOCITY® Enrollment & Signature Form (the “Licensee”).

1. DEFINITIONS.

The terms set forth below shall have the following meanings.

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| <p>1.1 “<u>Agreement</u>” means collectively, the Activate SEVOCITY® Enrollment & Signature Form, <u>Schedule A</u>, <u>Schedule B</u>, these General Terms & Conditions and the Business Associate Agreement.</p> <p>1.2 “<u>AMA</u>” shall mean the American Medical Association.</p> <p>1.3 “<u>Authorized Users</u>” shall have the meaning as defined in <u>Section 3(b)</u>.</p> <p>1.4 “<u>CCD</u>” shall mean Continuity of Care Document which is a joint effort of HL7 International (www.HL7.org) and ASTM (www.ASTM.org). CCD fosters interoperability of clinical data by allowing physicians to send electronic medical information to other providers without loss of meaning and enabling improvement of patient care.</p> <p>1.5 “<u>CPT</u>” shall mean the Physician’s Current Procedural Terminology, a coding work of nomenclature and codes for reporting of physician services.</p> <p>1.6 “<u>Licensee Data</u>” shall mean data originating with Licensee that it submits to SEVOCITY® and data that is received from Licensee or on its behalf by CMI.</p> <p>1.7 “<u>Data</u>” shall mean, collectively, Licensee Data and Processed Data.</p> <p>1.8 “<u>Days</u>” shall mean calendar days.</p> <p>1.9 “<u>Effective Date</u>” shall mean the date when the Licensee signs the Activate SEVOCITY® Enrollment & Signature Form.</p> <p>1.10 “<u>First Billing Date</u>” is the date specified on the Activate SEVOCITY® Enrollment & Signature Form.</p> <p>1.11 “<u>HIPAA</u>” means Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.</p> <p>1.12 “<u>Intellectual Property</u>” means any and all intellectual property associated with SEVOCITY®, SEVOCITY® Software, SEVOCITY® Content, Modifications, and Materials.</p> <p>1.13 “<u>Materials</u>” shall mean that certain user manual entitled “Inside SEVOCITY®” as updated from time to time.</p> <p>1.14 “<u>Modifications</u>” shall mean any and all changes or additions to SEVOCITY®.</p> | <p>1.15 “<u>Monthly Service Fee</u>” shall mean as defined in <u>Schedule A</u>.</p> <p>1.16 “<u>Non-Providers</u>” are Authorized Users who do not have Full Chart access within SEVOCITY®.</p> <p>1.17 “<u>Office Visit Encounters</u>” means Multi-system and/or OB Initial and Follow-up encounter types with patients.</p> <p>1.18 “<u>Processed Data</u>” shall mean Licensee Data submitted to CMI that has been received back by Licensee in processed form.</p> <p>1.19 “<u>Product Support Service</u>” shall mean telephone, fax, or e-mail advice and guidance for Licensee’s Authorized Users from qualified personnel concerning the effective use of SEVOCITY® by Authorized Users. This service is designed to provide assistance on matters specific to SEVOCITY® and not on more general matters such as computer programming, use of third party software, use of the Internet or use of computers generally. Questions requiring specialized knowledge of Licensee connectivity or hardware will be referred promptly to the relevant service provider. Response time for inquiries received by After Hours Product Support Services may be subject to delays caused by after hours paging and response time.</p> <p>1.20 “<u>Provider</u>” shall mean any Authorized User that requires Full Chart access within SEVOCITY®. Full Chart access is required in order to finalize encounters, prescribe medications and/or code/bill under the Authorized User’s name.</p> <p>1.21 “<u>Retired Provider</u>” is a term applicable to Licensees which have selected SEVOCITY® PM or SEVOCITY® Premier. Only a Licensee may change a Provider’s classification to “Retired Provider,” and such a change will terminate any pending claims. Any claims of a Retired Provider will no longer be processed or paid.</p> <p>1.22 “<u>SEVOCITY®</u>” shall mean SEVOCITY® Software, any Modifications thereto, SEVOCITY® Content, and any data included therein as provided by CMI. The term SEVOCITY® includes SEVOCITY® EHR, SEVOCITY® PM and SEVOCITY® Premier. <u>Schedule A</u> reflects which version of SEVOCITY® the Licensee has selected.</p> <p>1.23 “<u>SEVOCITY® Content</u>” shall mean data, information, functions or formats for organizing data originated by CMI that are not Licensee Data or Processed Data and that are supplied on-line to Licensee through SEVOCITY®.</p> <p>1.24 “<u>SEVOCITY® Customer Case Portal</u>” shall mean the Licensee’s online support case tool utilized for the submission of SEVOCITY® inquiries and concerns to CMI’s Support Department for SEVOCITY®, which may be accessed only by Licensee’s Authorized Users.</p> |
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- 1.25 "SEVOCITY® Services" shall mean those activities and functions of CMI described in Section 2.1.
- 1.26 "SEVOCITY® Software" shall mean the software licensed by CMI to Licensee as part of SEVOCITY® to enable Licensee access and functionality, except that it shall not include any unauthorized alteration or modification of such software made by Licensee or by any third party.
- 1.27 "Third Party Items" shall mean data, information, software and functions originating with or provided by Third Party Sources.
- 1.28 "Third Party Sources" shall mean other sources and providers of data and services with which CMI communicates, with which CMI arranges for availability of data, information, software or functions to Licensee or with which CMI arranges Internet or electronic links for use by or on behalf of Licensee.
- 1.29 "Uptime" shall mean the time during which SEVOCITY® is operational, as determined by CMI, based on system statistics accessed at CMI's data center

2. CMI SERVICES AND LICENSE.

- 2.1 Services. CMI shall provide Licensee with SEVOCITY® Services, described as follows: CMI provides a set of Internet hosted, multi-user software applications and associated data that are resident on CMI's servers, that are accessible through an Internet portal maintained by CMI and that permits users with appropriate software, data input and connectivity to access certain clinical patient information and clinic practice reports. Licensee may accomplish tasks using SEVOCITY® by establishing an Internet link with CMI's Internet server, by entering or posting data using that link and by requesting and receiving Processed Data using that link.
- 2.2 Grant of License. CMI hereby grants to Licensee a non-exclusive, non-transferable license for its Authorized Users to access and use SEVOCITY® within the United States during the term of the Agreement, under the conditions and requirements set forth in the Agreement. CMI shall have the right to make Modifications to SEVOCITY®.
- 2.3 Product Support Service. CMI or its designated service partner shall provide Product Support Service during its regular service hours: 7:00 a.m. through 10:00 p.m., Central Standard Time, weekdays exclusive of federal holidays. After hours support is available 24 hours a day, 365 days a year at no additional charge.
- 2.4 Additional Services.
- (a) Standard HL7 interfaces will be provided per Schedule A. Licensee may request additional services from CMI through a Work Order signed by Licensee and accepted by CMI. Additional services will be provided at CMI's then current rate.
- (b) CMI will offer a secure, encrypted email service referred to as Provider Patient Data Exchange ("PPDX"). Licensee will be entitled to one free

PPDX Email Account. Licensee may elect to purchase one or more additional PPDX Email Accounts for the fees set forth on Schedule A. A PPDX Email Account will be assigned to only one Authorized User, and only that Authorized User may use the assigned PPDX Email Account. Licensee agrees that in order to obtain the PPDX Email Account, a principal, owner or CEO of Licensee and each Authorized User who is to be assigned a PPDX Email Account must complete an individual verification process before the PPDX Email Account service can be established and PPDX Email Accounts assigned. If Licensee elects to use the PPDX service, additional instructions regarding use of the PPDX service will apply.

- 2.5 New Releases of SEVOCITY®. There is no charge for releases of updated versions of SEVOCITY®; however, as new optional additional features are made available, Licensee shall have the option to add on such features for an additional fee.

3. LICENSEE DUTIES.

- (a) Licensee shall, at its own expense, obtain, install, and maintain equipment and services meeting or exceeding the specifications provided by CMI for user equipment, software, connectivity to the Internet and system configuration.
- (b) Licensee shall identify to CMI one or more of its personnel as "Authorized Users" who are duly authorized by Licensee to access and use SEVOCITY® and the SEVOCITY® Customer Case Portal on its behalf. Each Authorized User must view and accept a "click through" user license which contains a summary of the Agreement, in order to gain access to SEVOCITY®. Licensee shall not permit individuals to access or use SEVOCITY® or the SEVOCITY® Customer Case Portal without authorization or beyond the scope of their authorization. Authorized Users consist of Providers and Non-Providers. When Licensee removes an Authorized User from SEVOCITY®, Licensee shall promptly notify CMI in writing, so that CMI can remove that Authorized User's access to the SEVOCITY® Customer Case Portal.
- (c) Licensee shall comply with such reasonable policies, procedures and instructions as may be established by CMI from time to time concerning access to and use of SEVOCITY®. Licensee shall comply with any requirements placed by Third Party Sources on access to or use of Third Party Items.
- (d) Licensee shall provide CMI with complete, accurate and timely information necessary to permit CMI to provide the SEVOCITY® Services. Licensee shall maintain and retain necessary and appropriate records of Licensee and enter all necessary data in its possession into SEVOCITY® including, but not limited to, patient information, usernames and passwords for all Authorized Users using SEVOCITY®, as well as assigned administrator privileges, and individual telephone numbers. Licensee shall

cooperate promptly to provide accurate and full responses to any inquiry or concern of CMI for clarification, documentation or further information related to SEVOCITY® Services.

- (e) Licensee shall secure all necessary consents from its patients to allow for access Licensee desires to provide to other providers who are involved in the care of an individual patient and all consents necessary to access patient information stored in SEVOCITY® by another SEVOCITY® customer health care provider who provides health care services to a common individual patient. As required by CMI's Third Party Services, Licensee shall also secure from all patients written consent permitting Licensee and CMI to access such patient's medication history and shall keep such consents on file at all time.
- (f) Licensee shall allow CMI full and free access to Licensee's hardware for purposes of performing any related SEVOCITY® Services.
- (g) Licensee shall use SEVOCITY® for its general internal business purposes only. Licensee shall access or use SEVOCITY® only to process transactions and data originated by the Licensee and shall not access or use SEVOCITY® for transactions or the processing of data on behalf of any third party. Licensee shall not use SEVOCITY® in connection with the provision by it or with its cooperation of a service to any third party that is a substitute for some or all SEVOCITY®'s functions.
- (h) Licensee shall not distribute or transmit SEVOCITY® to any third party or use SEVOCITY® on behalf of any third party. Licensee shall not sublicense, copy, record, modify, reproduce, reverse engineer, publish, translate or transfer possession, reverse compile or disassemble or prepare derivative works from SEVOCITY®, or attempt to derive source code or algorithms of SEVOCITY®, except and only to the extent that such activity is required to be permitted by applicable law notwithstanding this limitation.
- (i) Licensee shall not introduce or permit to be introduced into SEVOCITY® any virus, worm, Trojan horse or other software routine program or mechanism to permit unauthorized access into, to disable, to erase in whole or in part or otherwise to adversely affect SEVOCITY®.
- (j) Licensee shall comply with applicable laws and regulations, including its state laws and regulations concerning use of the Internet for communications with patients, when using SEVOCITY® for such communications.
- (k) Licensee shall participate fully in the implementation of SEVOCITY®, including attending the required customization sessions and training sessions and complying with other reasonable CMI instructions regarding the implementation. CMI will not be responsible for any issues resulting from Licensee's failure to comply with the parties' mutually agreed upon plan for implementing SEVOCITY®.

- (l) Licensee shall pay all fees specified in Section 4 and on the terms set forth therein. Licensee acknowledges that it is liable for all such fees, regardless of whether Licensee or CMI receives payment from third party payors.
- (m) Licensee acknowledges that (i) it is solely responsible for ensuring timely submission of claims including the timely review of edits and rejections and all other processes involved with the claim submission and payment process, (ii) it is solely responsible for patient signatures on assignment of benefit, releases and notices and physician signatures on charts and medical documents required for submission of claims, (iii) it is solely responsible for identification of diagnosis or medical condition, (iv) it is solely responsible for the decision to change a Provider's classification to "Retired Provider," and (v) CMI is not responsible for claim denials, partial payment or payment reductions from claim payors.

Violation or default by the Licensee of any requirements or restrictions set forth in Section 3 shall constitute breach of a material provision of the Agreement. Licensee understands that CMI may restrict or condition access and use at any time if it reasonably believes that such continued access or use will imminently and materially disrupt, degrade or injure continued function or use of SEVOCITY®.

4. FEES.

- 4.1 Generally. Licensee shall pay CMI the fees as set forth in Schedule A, and in the event of early termination by Licensee, the separation fee described in Section 5.3(c). Fees commence on the date set forth on the Activate SEVOCITY® Enrollment & Signature Form.
- 4.2 Payment Terms. The Monthly Service Fee shall be due and payable on the first day of the calendar month for which it applies. Except as expressly provided herein, any other fees and charges which accrue hereunder shall be due and payable thirty (30) days following the receipt of invoice outlining such charges or fees. CMI may impose a late charge of up to one and one half percent (1½%) per month on all amounts overdue as well as banking fees associated with declined payments and collection costs. CMI may submit bills by fax, e-mail, mail or any other means as provided for notices in Section 10.3, and bills shall be deemed received as set forth therein. Payment shall be made either by automatic bank draft or credit card, and CMI may terminate the Agreement if method of payment is switched or terminated without prior approval from CMI.
- 4.3 DISPUTED INVOICES. ANY DISPUTE REGARDING AN INVOICE MUST BE BROUGHT TO THE ATTENTION OF CMI WITHIN THIRTY (30) DAYS OF THE DATE OF INVOICE OR THE AMOUNTS INVOICED WILL BE DEEMED TO BE ACCEPTED AND CORRECT. THE PER PROVIDER / AUTHORIZED USER CHARGES ARE BASED UPON THE ACCESS LEVEL AND ACCESS STATUS GRANTED AUTHORIZED USERS BY THE LICENSEE.
- 4.4 MAINTENANCE OF AUTHORIZED USER ACCESS AND ASSOCIATED BILLING. LICENSEE

ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR MAINTAINING THE CORRECT ACCESS LEVELS FOR ALL AUTHORIZED USERS. LICENSEE MUST NOTIFY CMI OF REMOVAL OF AUTHORIZED USERS FROM SEVOCITY®, SO THAT CMI CAN REMOVE THEIR ACCESS TO THE SEVOCITY® CUSTOMER CASE PORTAL. LICENSEE FURTHER ACKNOWLEDGES THAT THE ADDITION OF A PROVIDER AND/OR ADDITIONAL NON-PROVIDER BEYOND THE RATIO INCLUDED IN SCHEDULE A WILL RESULT IN MONTHLY CHARGES FOR SAID PROVIDER OR NON-PROVIDER PER THE APPLICABLE RATE AS LISTED IN SCHEDULE A. LICENSEE ALSO ACKNOWLEDGES THAT REFUNDS WILL NOT BE PROVIDED BY CMI FOR AUTHORIZED USERS INCORRECTLY ADDED BY LICENSEE OR AUTHORIZED USERS THAT WERE NOT TIMELY DEACTIVATED BY LICENSEE.

4.5 Taxes. Licensee shall pay promptly all taxes assessed upon sale or the provision to Licensee of services or goods under the Agreement, excluding ordinary personal property taxes assessed against or payable by CMI and excluding taxes payable on CMI's net income.

4.6 Two Month Guarantee. In the event that Licensee decides not to continue with SEVOCITY® at the end of the initial two (2) months from the Go Live Date specified on the Activate Enrollment & Signature Form (as amended by CMI to reflect the actual Go Live Date, provided the amended date is no more than thirty (30) days later than the Go Live Date specified on the Activate Enrollment and Signature Form) and satisfies all of the requirements listed in this Section 4.6, CMI will waive Separation Fees (Section 5.3(c)) and refund to Licensee the SEVOCITY® Start-up Fees and Monthly Service Fees paid to CMI (except any fees paid to third party business partners, such as, but not limited to, fees for eprescribing tokens). In order to qualify for the Two Month Guarantee under this Section 4.6, Licensee (i) must be in compliance with all of the terms of the Agreement, (ii) must not be in breach of any of its duties specified in Section 3 of the General Terms & Conditions, (iii) must not have already submitted any notice of cancellation or termination to CMI, either verbally or in writing prior to the expiration of the two (2) month period commencing on the Go Live Date, as amended, (iv) must timely submit the payment for the Start-up Fees and the first month of Monthly Service Fees pursuant to the Agreement and timely pay for the second month of Monthly Service Fees when invoiced, (v) during the two (2) month period commencing on the Go Live Date, as amended, must finalize a minimum of one hundred (100) Office Visit Encounters for each Provider contracted, and (vi) must notify CMI on CMI's Cancellation Form of cancellation under this Two Month Guarantee no earlier than the first day, and no later than the thirtieth (30th) day, after the end of the initial two (2) months from the Go Live Date, as amended. If all of the terms of this Section 4.6 are not satisfied, the term and all other provisions of the Agreement will prevail.

4.7 Licensees with SEVOCITY® PM or SEVOCITY® PREMIER. Licensees of SEVOCITY® PM or SEVOCITY® Premier acknowledge and agree that (i) that a Provider must continue to be classified as a Provider of Licensee in order to continue to process and collect claims (even after a Provider has departed

for Licensee), and (ii) if Licensee changes a Provider's classification to "Retired Provider" then such change will cut off all claims in process and no further claims for that Provider will be paid. Licensee must continue and must pay for the SEVOCITY® PM or SEVOCITY® Premier for such Provider until the month after Licensee changes a Provider status to Retired Provider. CMI shall not be responsible for any action taken by Licensee regarding changes of a Provider's classification.

5. TERM AND TERMINATION.

5.1 Term. Unless terminated as provided herein, the term of the Agreement shall be for the period stated on the Activate SEVOCITY® Enrollment & Signature Form hereto. The term shall be automatically extended for successive periods of one (1) year each unless written notice of nonrenewal is given by either party at least thirty (30) days prior to the expiration of the term.

5.2 Termination.

(a) Licensee may terminate at any time after the one-year anniversary of the First Billing Date by giving at least thirty (30) days prior written notice to CMI; such notice must be given using CMI's Cancellation Form which will be provided by CMI upon request; Licensee shall pay the applicable Separation Fee specified in Section 5.3(c).

(b) In addition, either party may terminate the Agreement at any time by giving written notice of termination to the other party in the event the other party:

(i) defaults in performance of any material provision of the Agreement, and such default continues and is not cured to the notifying party's satisfaction for a period of thirty (30) days after written notice to the defaulting party stating the specific default, except that said period of thirty (30) days shall be reduced to fifteen (15) days in the event of any failure to pay CMI sums due under the Agreement, and there shall be no cure in the event of a breach of Section 3(g), 3(h) or 3(i); or

(ii) has voluntary or involuntary proceedings commenced for the winding up or dissolution, the appointment of a receiver for the assets, the assignment of assets for the benefit of creditors, or any action or relief taken or suffered as bankrupt or insolvent under any bankruptcy or insolvency laws.

5.3 Effect of Termination. Upon termination:

(a) all licenses and rights granted by CMI to Licensee herein shall terminate immediately and Licensee shall immediately cease use of all licensed items;

(b) Licensee shall continue to be obligated to pay and shall pay to CMI all amounts otherwise payable in accordance with the terms of Section 4 for all services actually rendered by CMI;

- (c) in addition to the compensation described in Section 5.3(b) above, if Licensee terminates the Agreement prior to the end of the initial term, Licensee will pay a Separation Fee as follows:

<u>MONTHS REMAINING IN INITIAL TERM</u>	<u>SEPARATION FEE</u>
25 months or more remaining in initial term	The Monthly Service Fee for each month remaining until the one-year anniversary of the First Billing Date plus an additional 3 months of Monthly Service Fee
Greater than 12 months, but less than 25 months remaining in initial term	2 times Monthly Service Fee
12 months or less remaining in initial term	1 times Monthly Service Fee

This Separation Fee shall be due and payable at time of termination;

- (d) SEVOCITY® includes functionality allowing Licensee to export (i) the CCD for all their patients or selected patients as determined by the Licensee user, and (ii) all notes and documents for each patient via the Export Chart feature in SEVOCITY®. If a terminating Licensee also wishes to request and receive an exported copy of its entire Data in PDF format with searchable metadata file, then (i) the Licensee must request this copy in the Cancellation Form described in Section 5.2(a), (ii) the Licensee must agree to pay the then prevailing fees for such exported copy, and (iii) the Licensee must pay the fee for the exported copy as well as all other amounts owing to CMI prior to delivery of the exported copy;
- (e) the rights and obligations of the parties under Sections 3, 5.3, 6, 7.5, 8, 9, 10.4, and 10.5 shall survive termination of the Agreement and shall remain in full force and effect; and
- (f) the parties shall have such further rights as are provided by law subject to the limitations and disclaimers in the Agreement.

6. SECURITY, CONFIDENTIALITY, AND PROPRIETARY INFORMATION.

- 6.1 Security. Each party shall take reasonable steps to maintain the security of SEVOCITY®, Data and information in their respective possession, including but not limited to reasonable steps: to maintain confidentiality of passwords, to maintain physical security of equipment and facilities in their respective control, to exercise appropriate oversight and supervision of their respective personnel, to evaluate their respective security safeguards periodically, to install and maintain appropriate firewalls and other technical measures where appropriate, and to guard against the intentional or unintentional corruption or loss of data in their respective control. Such steps shall include, but not be limited to, the following: Licensee shall maintain an up-to-date list of the names

of all Authorized Users including the scope of SEVOCITY® access for each Authorized User and ensure that only Authorized Users use the assigned password. Licensee shall assign a password to each Authorized User. Each password shall be unique to each Authorized User and shall be non-transferable. CMI shall permit access to or use of SEVOCITY® only to users who present appropriate usernames and the associated passwords. CMI shall be entitled to assume, unless notified by Licensee otherwise, that a user presenting a username and associated password is in fact the corresponding Authorized User. If the Licensee or its personnel knowingly or unknowingly furnish a password to an unauthorized person, the Licensee is validating the authority of such person to act on its behalf as to any access or use of SEVOCITY® with that password and shall be responsible for any charges, damages or losses incurred or suffered as a result of its failure to maintain the confidentiality of any password. Licensee shall notify CMI immediately if it becomes aware of any unauthorized use of any username or password, and CMI shall take reasonable steps upon such notification to shut off access or use by such username and associated password.

The parties acknowledge that no security measures are perfect and that security breaches may occur despite commercially reasonable efforts. Each party shall promptly report to the other any material system, equipment, or software malfunction, error, breakage or breach that involves the security of Data that such party detects or that it believes is imminent or is likely to have occurred. Each party shall reasonably cooperate with the other in efforts to reduce the effects of any such malfunction, error, breakage or breach, to mitigate damage and restore lost code or data.

- 6.2 Confidentiality. Each party shall comply fully with all applicable provisions of any privacy and/or security regulations promulgated pursuant to HIPAA, as of the date by which compliance is required by such regulations. The parties shall execute a Business Associate Agreement in compliance with such regulations.

- 6.3 Proprietary Information. SEVOCITY®, all related Intellectual Property, and the activities and functions performed by CMI in response to communications from Licensee, shall be and remain the exclusive property of CMI, and no right, title or interest (including Intellectual Property rights) in and to SEVOCITY® will pass to Licensee. All derivative works prepared from SEVOCITY® and all analysis of non-protected health information shall be and remain the exclusive property of CMI. CMI shall have the right at its option to provide a proprietary legend and/or mark on SEVOCITY® and Licensee shall not obscure such legend or mark. Licensee may copy such items only on condition that the legend and mark, if any, is reproduced intact with each item.

7. WARRANTIES.

- 7.1 Licensee Authorization; No False Claims. Licensee warrants that it and its personnel are duly authorized to submit and access the Licensee Data in connection with the use of SEVOCITY® and that each Provider is a licensed medical professional with authority to prescribe medicine. Further, Licensee covenants that

no false or fraudulent claims will be submitted to any payor.

7.2 **Title and Ownership.** CMI warrants to Licensee that it owns and has all rights, title and interest in and to all intellectual property relating to SEVOCITY®, including any and all patents, patents pending, trade secrets, trademarks, copyrights, and all related applications therefor. CMI also warrants that it has all of the necessary licenses and authorizations to sublicense to Licensee any Third Party software which may be included in SEVOCITY®.

7.3 **No Trojan Horse or Others Similar Routines.** CMI warrants that SEVOCITY® does not contain any virus, "Trojan horse," "worm," or other software routines designed to permit unauthorized access, to disable, erase, or otherwise harm software, hardware or data, or to perform any other similar actions.

7.4 **Availability and Performance.** Uptime for SEVOCITY® shall be seven (7) days a week, twenty-four (24) hours a day ("**Scheduled Uptime**"), provided that upon notice to the Licensee at least seventy-two (72) hours in advance, CMI may provide for scheduled downtime for maintenance ("**Scheduled Downtime**"). CMI warrants to Licensee for the term of the Agreement that SEVOCITY® shall be available for use by Licensee as set forth in the Agreement in substantially its full core functionality for a minimum of 99.5% of the Scheduled Uptime on a monthly basis, excluding Scheduled Downtime ("**Performance Criteria**"). If the breach of warranty or failure results in Uptime being less than the specified Performance Criteria for two (2) consecutive months or for four (4) months in any consecutive twelve (12) month period, then Licensee's sole remedy is as follows:

- (a) if failure to meet the Performance Criteria is caused solely by events within CMI's commercially reasonable control, CMI shall credit the Licensee against the Monthly Service Fee due for that month at the rate of ten percent (10%) of such Monthly Service Fee for the affected month for every five percent (5%) of Scheduled Uptime by which the availability of the core functionality of SEVOCITY® in that month falls below ninety-five percent (95%) of Scheduled Uptime;
- (b) if failure to meet the Performance Criteria is caused in predominant part by events within CMI's commercially reasonable control and in part by acts or omissions of third parties, failure of third party systems or equipment or other events beyond CMI's commercially reasonable control, CMI shall credit the Licensee against the Monthly Service Fee due for that month at the rate of ten percent (10%) of its Monthly Service Fee amount for the affected month for every eight percent (8%) of Scheduled Uptime by which the availability of the substantial functionality of SEVOCITY® in that month falls below ninety-five percent (95%) of Scheduled Uptime; and
- (c) if failure to meet the Performance Criteria is caused in predominant part by events outside CMI's commercially reasonable control or is caused in any degree by the fault, negligence or

breach of Licensee, there shall be no credit to Licensee and no remedy or liability of CMI.

Notwithstanding the foregoing, credits to Licensee shall not exceed fifty percent (50%) of the Monthly Service Fee prorated for the period of breach of warranty or failure.

7.5 **Certification.** SEVOCITY® EHR is a Complete EHR and has been certified in accordance with the applicable eligible provider certification criteria adopted by the Secretary of Health and Human Services. CMI will continue to maintain certification as a "certified EHR technology," and seek to obtain certification under future editions promulgated by the Centers for Medicare & Medicaid Services (CMS) on or before the date physicians are required to have an EHR certified to that edition in order to avoid financial penalties from CMS.

7.6 **Disclaimers.**

- (a) EXCEPT AS EXPRESSLY PROVIDED HEREIN, CMI DOES NOT MAKE NOR SHALL IT BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, WHETHER EXPRESS OR IMPLIED TO LICENSEE OR TO ANY PATIENT WITH RESPECT TO ANY SERVICE PROVIDED HEREUNDER; AND, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, DESIGN, OPERATION, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE WITH INFORMATION, AND ACCURACY OF INFORMATIONAL CONTENT AND ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OR USAGE IN TRADE.
- (b) Licensee acknowledges and agrees that SEVOCITY® involves complex computer hardware and software that is not necessarily free from defects or able to operate without interruption and that CMI does not warrant the same. CMI does not warrant that SEVOCITY® is free from errors or defects and shall not be responsible with respect to any liabilities arising therefrom; and, SEVOCITY® and each part or aspect of it is provided "AS IS." CMI makes no warranty and shall not be responsible with respect to the results that may be obtained from the use of SEVOCITY® or the accuracy, reliability, or functionality of any Data or other information submitted to or retrieved by Licensee in connection with SEVOCITY®.
- (c) Under no circumstances shall CMI be responsible for the acts or omissions of Third Party Sources. CMI is not responsible for the accuracy, reliability, or functionality of any Third Party information, CMI makes no warranty concerning the same, and, all Third Party information is provided on an "AS IS" basis only.
- (d) CMI makes no warranty and shall not be responsible with respect to any interception, access, loss, impairment, delay, corruption, or damage of any outbound code or data after the packet leaves the back end of CMI's Internet

server or of any inbound code or data before the packet enters the back end of CMI's Internet server.

- (e) Licensee assumes responsibility to evaluate for itself the suitability and functionality of SEVOCITY® and any information it obtains from using SEVOCITY®. SEVOCITY® does not take the place of bookkeepers, accountants, attorneys, or any other professional or licensed financial or legal services providers.
- (f) The AMA disclaims any liability for any consequences due to use, misuse or interpretation of information contained or not contained in CPT.
- (g) CMI shall not be responsible for use of the Patient Portal by Authorized Users or patients. CMI shall not be responsible for use of the SEVOCITY® Customer Case Portal by Authorized Users, or for any HIPAA violations arising from Authorized Users inputting impermissible data into SEVOCITY® Customer Case Portal. CMI shall not be responsible for maintaining or updating Licensee's Authorized Users.
- (h) Licensee acknowledges that CMI may provide information to assist Licensee in clinical decision-making. This may include information and reminders concerning drug interactions, allergies, dosages, as well as general health-care related information and resources. CMI may also provide forums for its licensees to exchange information. The information and materials available through this site are for informational and educational purposes only and are not intended to constitute professional advice, diagnosis or treatment, or to substitute for Licensee's professional judgment. Licensee assumes full risk and responsibility for the use of information Licensee obtains from or through this site, and Licensee agrees that CMI is not responsible or liable for any claim, loss, or liability arising from the use of the information.

8. INDEMNIFICATION.

Licensee agrees to indemnify and hold harmless CMI and CMI's officers, directors, agents, employees and contractors from and against any and all claims, damages, and costs (including reasonable attorneys' fees) resulting from or arising out of Licensee's negligence, Licensee's tortious act, or Licensee's breach of the warranty in [Section 7.1](#).

9. LIABILITY LIMITATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, NEITHER CMI NOR THE AMA SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY LICENSEE OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT. CMI'S LIABILITY FOR DAMAGES UNDER THE AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT OF MONTHLY SERVICE FEES PAID BY LICENSEE IN THE TWELVE (12) MONTHS PRIOR TO SUCH A LOSS. AMA'S SOLE RESPONSIBILITY SHALL BE TO MAKE AVAILABLE TO CMI

REPLACEMENT COPIES OF THE MEDIUM ON WHICH THE CPT IS LOCATED, IF IT IS NOT INTACT.

10. GENERAL TERMS.

- 10.1 Entire Agreement; Amendment; Assignment. The Activate SEVOCITY® Enrollment & Signature Form, [Schedules A](#) and [B](#), these General Terms and Conditions and the Business Associate Agreement entered into between CMI and Licensee, constitute the entire agreement between the parties. CMI may amend the General Terms & Conditions, [Schedule B](#) and the Business Associate Agreement at any time by posting updated versions on-line at www.sevocity.com/serviceagreements and providing Licensee with ten (10) days' notice prior to the effective date of such change. Licensee may not assign the Agreement without the prior written consent of CMI. CMI may assign the Agreement at any time.
- 10.2 Force Majeure. No failure, delay or default in performance of any obligation under the Agreement shall constitute an event of default or a breach of representation or warranty under the Agreement if and to the extent it is caused by a strike; fire; legal act of a public authority; unavoidable casualty; civil disorder; vandalism; war; act of terrorism; inclement weather; failure of the Internet; failure or error of any Internet access provider; failure or impairment of any lines of transmission belonging to any third party; failure or impairment of any third party server, router, other equipment or software through which Internet transmissions occur; or, other extraordinary cause if such cause or condition is beyond the reasonable control of the party otherwise chargeable, for so long as such cause or condition continues and for a reasonable period of time thereafter.
- 10.3 Notices. Any notice shall be in writing and delivered personally, or sent by facsimile, e-mail or other electronic medium, or by United States mail, postage prepaid, and deemed given when delivered personally, when received by facsimile, e-mail or other electronic medium, or if mailed, three (3) days after the date of mailing, at the addresses listed under the signatures of the parties hereto. A party may change its address by providing written notice to the other party and such change shall be effective upon receipt.
- 10.4 Governing Law. The laws of the State of Texas, excluding its conflicts laws, shall govern the Agreement and the entire relationship between the parties hereto, and all matters arising out of or relating to the Agreement. Venue shall be in Bexar County, Texas. The U.N. Convention for the International Sale of Goods shall not apply to the Agreement.
- 10.5 Arbitration. In the event of a dispute that the parties have been unable to resolve in a timely manner through good faith negotiations, such dispute shall be resolved by binding arbitration according to the rules of the American Arbitration Association. Notwithstanding the foregoing, either party may seek injunctive relief in court to prevent imminent harm, on condition that such party shall immediately submit the controversy to arbitration pursuant to this Section.
- 10.6 Severability. If any portion of the Agreement is held to be invalid, unenforceable or in violation of any law, such provision shall not affect or impair the validity and enforceability of the remainder of the Agreement, and the arbitrator or court making such determination

shall have the power to alter or amend such provision so that it shall be enforceable consistent with the intention of the parties.

10.7 Non-Solicitation. During the term of the Agreement and for a period of one (1) year after any expiration or termination of the Agreement, both parties agree not to directly solicit for employment any employee or independent contractor of the other party involved in the performance of services related to the Agreement, without first obtaining the written consent of the other party. Such prohibition shall not extend to advertisements customarily placed in media circulated to the public.

10.8 CPT. Licensee acknowledges that the provision of an updated version of CPT in SEVOCITY® is dependent upon continuing contractual relations between CMI and the AMA. Licensee shall not use CPT or

information contained therein in any public electronic bulletin board, or public computer based information system (including the World Wide Web). Licensee shall not create derivative works based on CPT. CPT is copyrighted by the AMA, and CPT is a registered trademark of the AMA, and all notices of proprietary rights, including trademark and copyright in CPT must appear on all permitted back-up or archived copies made by Licensee.

10.9 U.S. Government Rights. SEVOCITY® includes CPT which is commercial technical data, which was developed exclusively at private expense by the AMA, 330 North Wabash Avenue, Chicago, Illinois, 60611. The AMA does not agree to license CPT to the Federal Government based on the license in FAR 52-227-14 (Data Rights – General) and DFARS 252.227-7015 (Technical Data – Commercial Items) or any other license provision. The AMA reserves all rights to approve any license with any Federal agency.

CMI:

Conceptual MindWorks, Inc., a Texas corporation

By:

Elaine Mendoza

Elaine Mendoza, President & CEO

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San Antonio, Texas 78231
Phone: (877) 777-2298
Facsimile: (210) 737-6677

LICENSEE:

The Licensee executes these General Terms & Conditions which are part of the Agreement by signing and dating the Activate SEVOCITY® Enrollment & Signature Form and Schedule A as appropriate, and delivering them to CMI.

SCHEDULE B

THIRD PARTY SOURCES SUPPLEMENTAL TERMS

The following provisions are supplemental terms which must be agreed to by Licensee in order for CMI's business partners to comply with HIPAA and other contractual requirements placed on them. CMI requires that Licensee agree to this Addendum so that CMI may provide services to Licensee.

1. Persons who use SEVOCITY® for electronic prescriptions must be Providers who are licensed medical professionals with the right to prescribe medicine.
2. CMI, if presented with evidence of reasonable cause to suspect violations of the Agreement shall have the right to audit Licensee's records to ensure Licensee's compliance with Licensee's obligation to secure and maintain written consents from all patients. CMI shall have the right to transfer these audit rights to one of its business partners, provided that any such audit must be conducted with at least five (5) days' notice, during normal business hours at a mutually agreeable time, and that the cost of any such audit will be borne by CMI or the party conducting the audit.
3. CMI and its business partners reserve the right to share certain account or other information with third parties, when there is a good faith belief that the law or legal process requires it, or when it is necessary to do so to protect the rights or property of CMI or others.
4. CMI shall have the right to add future provisions which may be for the benefit of CMI and or its business partners, including changes required by changes in federal, state or local law (including HIPAA), or upstream requirements by CMI's vendors.
5. It is understood and agreed by both CMI and Licensee, that CMI's business partner, DrFirst.com, Inc. (DrFirst) and DrFirst's business partner, Surescripts, shall each be an intended third party beneficiary of the Agreement with respect to those provisions which require Licensee's compliance with HIPAA, protection of confidential information, and protection of third party intellectual property. It is further understood and agreed that DrFirst and Surescripts, as intended third party beneficiaries with respect to these provisions, may enforce compliance with these provisions if there is a breach or threatened breach of their rights.
6. DrFirst, with ten (10) days written notice, and Surescripts without notice, shall have the right to access, inspect and review all records related to information and prescription data provided by or through the Surescripts network through SEVOCITY®.
7. Licensee shall not, and shall ensure that its Authorized Users do not, use any means, program or device to influence the decision of an Authorized User to write a prescription for a certain medication or to send the prescription to a certain pharmacy; provided however, that information related to formulary and benefit plan design and information from payers or other reputable sources providing clinical information shall be exempt from this prohibition, so long as the Provider can still access all pharmaceuticals and the Provider or patient is not prohibited from selecting a pharmacy.
8. Licensee acknowledges and agrees, and shall have each of its Authorized Users acknowledge and agree, that the prescription benefit and medication history information provided is not accurate or complete, and that CMI, Dr. First, Surescripts, the pharmacy, pharmacy benefit manager, payor or other data source provides no representation or warranties with respect to the accuracy or completeness of the prescription benefit or medication history information. Furthermore, Licensee releases, and shall by contract, cause each of its Authorized Users to release and hold harmless, DrFirst, Surescripts, CMI and any other person or entity providing prescription benefit or medication history information from any liability, cause of action, or claim related to the completeness or lack thereof of the information. Licensee and each of its Authorized Users shall confirm this information with the patient before providing medical services, and use his/her professional judgment in the provision of care.
9. Licensee shall ensure that all messages transmitted to DrFirst originate from Authorized Users who are employed by, subject to the direction and control of, or otherwise are licensed, registered and authorized Providers registered with CMI.
10. CMI and DrFirst shall have the right to use the prescription data provided to DrFirst in any manner, so long as it is in compliance with all applicable state and federal laws and regulations, including but not limited to the ability to de-identify and aggregate the prescription data.
11. The AMA licenses CPT to CMI for use in SEVOCITY®. The AMA is a third party beneficiary of the Agreement. Licensee grants CMI permission to provide the AMA with Licensee's name and a copy of the Agreement. Licensee will ensure that anyone with authorized access to SEVOCITY® will comply with the provisions of the Agreement. Licensee will keep complete and accurate books and records concerning the Agreement for at least three (3) years following the year to which they pertain.

12. If requested by CMI or the AMA, Licensee agrees to accurately calculate and count and report to CMI, on a quarterly basis on dates specified by CMI and on a form required by CMI, the following information:

- (a) Total Number of Billing Providers (as defined below);
- (b) Total Number of Billing Providers (full time equivalents) x 4;
- (c) Total Number of M.D.s;
- (d) Total Number of full-time equivalent employees; and
- (e) Total Number of Users (as defined below).

For purposes of this Section 12, the term "Billing Provider" means a health care professional who renders medical services for which a fee is charged.

For purposes of this Section 12, the term "User" means an individual who:

- (i) accesses, uses, or manipulates CPT contained in SEVOCITY®; or
- (ii) accesses, uses or manipulates SEVOCITY® to produce or enable an output (data, reports, or the like) that could not have been created without CPT embedded in SEVOCITY® (even though CPT may not be visible or directly accessible); or
- (iii) makes use of an output (data, reports or the like) of SEVOCITY® that relies on or could not have been created without CPT embedded in SEVOCITY® (even though CPT may not be visible or directly accessible).

LICENSEE'S SUBMISSION OF EACH REPORT TO CMI SHALL CONSTITUTE LICENSEE'S ATTESTATION OF THE ACCURACY AND COMPLETENESS OF THE REPORT.

CMI or its representatives may, at CMI's expense and no more than once per year, audit and copy Licensee's records pertaining to the Agreement at Licensee's location in the presence of Licensee's personnel or representative. If the audit discloses that Licensee's reports were over-reported or under-reported by five percent (5%) or more in any reporting period, Licensee will reimburse CMI for the cost of the audit.

13. Sand Dune Mail Ltd. is the third party provider for the SMTP2GO service associated with the unencrypted email service in SEVOCITY® (for email communications from Licensee to patients and from patients to others) and is a third party beneficiary of the Agreement. Licensee agrees that it shall have obtained prior permission from any recipients to send them emails. Licensee agrees that it will not send unsolicited marketing email (i.e., without proper permission from recipients) and shall not send any unsolicited emails of any kind. Use of the email service is solely at Licensee's risk, and Licensee shall indemnify and hold harmless CMI and Sand Dune Mail Ltd. from and against any and all claims, damages, and costs (including reasonable attorneys' fees) relating to or arising out of (i) any acts by Licensee or materials or information transmitted by Licensee in connection with the email service, regardless of the type of claim or the nature of the cause of action, and (ii) a patient's right and ability to send unencrypted medical information at the patient's direction.