

**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 "Agreement" 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 "AMA" shall mean the American Medical Association.</p> <p>1.3 "Authorized Users" shall have the meaning as defined in <u>Section 3(b)</u>.</p> <p>1.4 "C-CDA" shall mean Consolidated Clinical Document Architecture which is a joint effort of HL7 International (www.HL7.org) and ASTM (www.ASTM.org). C-CDA format 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 "Clinical Decision Support (CDS)" shall mean clinical decision support intervention protocols designed to manage the clinic's patient population. These CDS protocols are evidenced-based DSIs (decision support interventions). CMI does not provide CDS protocols. Licensee may create its own CDS Protocols.</p> <p>1.6 "CPT" shall mean the current version of <i>Current Procedural Terminology</i>, a coding work of nomenclature and codes for reporting of physician services and CPT standard data file published by the AMA.</p> <p>1.7 "E/M Coding" shall mean specialized CPT codes billed for the Evaluation and Management of a patient and his/her condition(s).</p> <p>1.8 "Licensee Data" 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>1.9 "Data" shall mean, collectively, Licensee Data and Processed Data.</p> <p>1.10 "Days" shall mean calendar days.</p> <p>1.11 "Effective Date" shall mean the date when the Licensee signs the Activate SEVOCITY® Enrollment & Signature Form.</p> <p>1.12 "First Billing Date" is the date specified on the Activate SEVOCITY® Enrollment & Signature Form.</p> <p>1.13 "HIPAA" means Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.</p> | <p>1.14 "Intellectual Property" means any and all intellectual property associated with SEVOCITY®, SEVOCITY® Software, SEVOCITY® Content, Modifications, and Materials.</p> <p>1.15 "Materials" shall mean CMI's knowledgebase website and modular documentation, including training videos, as updated from time to time.</p> <p>1.16 "Modifications" shall mean any and all changes or additions to SEVOCITY®.</p> <p>1.17 "Monthly Service Fee" shall mean as defined in <u>Schedule A</u>.</p> <p>1.18 "Non-Providers" are Authorized Users who do not have Full Chart access within SEVOCITY®.</p> <p>1.19 "Office Visit Encounters" means Multi-system, Exam, OB Initial, OB Follow-up and/or OB Postpartum encounter types with patients.</p> <p>1.20 "ONC" shall mean the Office of the National Coordinator for Health Information Technology, a division of the Department of Health and Human Services.</p> <p>1.21 "Patient Portal" shall mean the secure, web-based system and/or mobile application available for Licensees to grant access to their patients to view their own health records. The Patient Portal contains a Privacy Policy and Terms & Conditions, which are incorporated herein by reference.</p> <p>1.22 "Processed Data" shall mean Licensee Data submitted to CMI that has been received back by Licensee in processed form.</p> <p>1.23 "Product Support Service" 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>1.24 "Provider" shall mean any Authorized User that is considered by an insurance company to be the Rendering Provider for E/M Coding or an Authorized User that requires Full Chart access within SEVOCITY®. Full Chart access is required to finalize encounters, prescribe medications and/or code/bill under the Authorized User's name.</p> |
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- 1.25 "PRM Services" shall mean population risk management services which permit Authorized Users to access a patient's medication history data as part of a patient panel, for purposes of providing care to such individuals in the panel including, but not limited to, identifying gaps in care and performing adherence monitoring.
- 1.26 "Rendering Provider" shall mean a person who rendered services or care to a patient (i.e., saw/met with the patient).
- 1.27 "Retired Provider" 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.
- 1.28 "SEVOCITY®" 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. Schedule A reflects which version of SEVOCITY® the Licensee has selected.
- 1.29 "SEVOCITY® Content" 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®.
- 1.30 "SEVOCITY® Customer Case Portal" 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.
- 1.31 "SEVOCITY® Services" shall mean those activities and functions of CMI described in Section 2.1.
- 1.32 "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.
- 1.33 "Support Services Fee" shall mean the monthly fee charged for Product Support Services. The Support Services Fee may be changed from time to time. This fee may be referred to as the "Sevocity Support Package Fee" or similar name.
- 1.34 "Third Party Items" shall mean data, information, software and functions originating with or provided by Third Party Sources.
- 1.35 "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.
- 1.36 "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 limited, 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.
- 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 Direct Message or Direct Messaging. Licensee will be entitled to one free Direct Messaging Email Account. Licensee may elect to purchase one or more additional Direct Messaging Email Accounts for the fees set forth on Schedule A. A Direct Messaging Email Account will be assigned to only one Authorized User, and only that Authorized User may use the assigned Direct Messaging Email Account. Licensee agrees that in order to obtain a Direct Messaging Email Account, a principal, owner or CEO of Licensee and each Authorized User who is to be assigned a Direct Messaging Email Account must complete an individual verification process before the Direct Messaging Email Account service can be established and Direct Messaging Email Account assigned. If Licensee elects to use the Direct Messaging service, additional instructions regarding use of the Direct Messaging 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 and retain 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, and shall provide notes and obtain permissions, consents, and rights necessary for the ambient voice capture or recording features available to or used by Licensee.
- (f) Licensee shall allow CMI full and free access to Licensee's hardware for purposes of performing any related SEVOCITY® Services. Licensee shall allow CMI full and free access to Licensee's account and data for troubleshooting, maintenance, training, product improvements, product analytics and other appropriate 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, including a subsidiary, affiliate, or other legal entity, 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, all coding and billing, and all changes or modifications to any of the foregoing, (iv) it is solely responsible for the decision to change a Provider's classification to "Retired Provider," (v) CMI is not responsible for claim denials, partial payment or payment reductions from claim payors, and (vi) any codes suggested by SEVOCITY® are merely suggestions and that the selection of codes is exclusively the choice of the Provider, in his or her professional experience.

- (n) Licensee shall be responsible for granting and managing access of its patients to the Patient Portal.
- (o) Licensee acknowledges that it is solely responsible for (i) the creation, modification, or use of CDS protocols, and (ii) verifying the safety, accuracy, effectiveness, validity, and appropriateness of any CDS protocols.
- (p) Licensee will ensure that the phone numbers provided for patients who will receive text messages regarding prescriptions, etc. are complete and accurate.
- (q) Licensee acknowledges that PRM Services may only be requested and used by a Provider who is providing treatment services to that Provider's patient, and the data may only be used for that patient's treatment and for no other reason. Licensee acknowledges that its Authorized Users shall use PRM Services only for those patients from whom the Authorized User has obtained the consent of the patient to access such patient's medication history. Licensee and each Authorized User shall not provide the medication history to any other person or entity for any reason whatsoever, or use the medication history for any purpose (whether in aggregated form or otherwise) other than in the course of treatment for such Authorized User's patient. Licensee shall implement appropriate administrative, technical, and physical safeguards to prevent any use or disclosure of any data provided in the PRM Services other than for the sole purpose treatment of the Authorized User's patient. Licensee acknowledges that PRM Services are queried and returned on a bulk patient panel basis, rather than on an individual patient basis. Licensee and Authorized Users will adhere to applicable policies, procedures, specifications, and documentation for implementation, access, and use of the PRM Services, including but not limited to any protocols, implementation standards, technical specifications, and connectivity standards. Licensee acknowledges that it may take up to 72 hours from time of request to return medication history data and therefore such data may not be up to date when available. CMI and its third party provider, DrFirst, disclaim any warranty that the data, reports, or analysis thereof are accurate or will yield any result.

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, the Support Services Fee, 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. All fees are due upon receipt of invoice. 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 initiated by CMI, 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, including taxes later assessed by a state, and 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 Licenseses with SEVOCITY® PM or SEVOCITY® PREMIER. Licensees of SEVOCITY® PM or SEVOCITY® Premier acknowledge and agree that (i) 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 from 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. The annual renewal date shall be the anniversary of the First Billing Date on the Activate SEVOCITY® Enrollment and Signature Form.

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\(h\), 3\(i\), or 7.1](#); 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, including the Patient Portal, 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) If a terminating Licensee wishes to request and receive an exported copy of its entire Data in a machine-readable format certified to ONC 170.315(b)(10) criterion, then (i) the Licensee must request and complete the Cancellation Form described in Section 5.2(a), and (ii) the Licensee must pay all outstanding fees owed to CMI prior to delivery of the exported copy. CMI does not provide data migration services. The Cancellation Form and related instructions on the data extraction process contain additional terms which are incorporated in and shall be part of this Agreement are available upon request;
- (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 ONC. CMI will continue to maintain certification as a "certified EHR technology," and seek to obtain certification under future editions promulgated by the ONC on or before the date physicians are required to have an EHR certified to that edition.

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, or for any breaches of Section 3(f).
- (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.
- (h) 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.
- (i) CMI shall not be responsible for maintaining or updating Licensee's Authorized Users.
- (j) 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.

- (k) CMI is not responsible or liable to Licensee, its Authorized Users, or any third parties, for issues arising from the creation, modification, or use of CDS protocols.
- (l) CMI and its third party provider, DrFirst, disclaim any warranty that the data, reports, or analysis in PRM Services are accurate or will yield any result.

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. CMI, as a party to a license agreement with the AMA, is authorized to grant Licensee a limited, non-exclusive, non-transferable, non-sublicensable license for Licensee to use CPT in SEVOCITY®, for the sole purpose of internal use by Licensee within the United States. Licensee acknowledges that the provision of

an updated version of CPT in SEVOCITY® is dependent upon continuing contractual relations between CMI and the AMA. The sublicense shall automatically terminate upon termination of the agreement between CMI and AMA unless prior written consent of AMA is obtained by CMI or a direct license between Licensee and AMA is entered. Licensee shall not broadcast, display, or make available CPT in any unsecured environment or public computer-based information system, including the internet. 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 End Users. SEVOCITY® includes CPT which is commercial technical data, which was

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developed exclusively at private expense by the AMA, 330 North Wabash Avenue, Chicago, Illinois, 60611. This Agreement does not grant the Federal Government a direct license to use CPT based on FAR 52-227-14 (Data Rights – General) and DFARS 252.227-7015 (Technical Data – Commercial Items).

10.10 Communications. Nothing in the Agreement shall be construed to contain a restriction or prohibition on communications concerning the usability, interoperability, or security of Sevocity®, users' experience with Sevocity®, CMI's business practices related to exchanging health information, or the manner in which a user has used Sevocity®, except as expressly permitted by 45 CFR Section 170.403, including but not limited to non-disclosure of CMI's Intellectual Property.

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.