



EZDERM, LLC

MASTER SUBSCRIPTION AND SERVICES AGREEMENT

THIS MASTER SUBSCRIPTION AND SERVICES AGREEMENT (this “**Agreement**”) together with each Order Form governs Medical Practice’s (as defined on the Order Form) use of and access to the Software, Services, Subscription, Support or such other EZDERM services and products provided by EZDERM, LLC, a Florida limited liability company, with offices at 4850 Tamiami Trail N, Suite 301, Naples, Florida, 34103 (“**EZDERM**”). This Agreement takes effect when Medical Practice executes the Order Form or, if earlier, when Medical Practice uses or accesses the Software, Services, Subscription, Support or such other EZDERM services and products (the “**Effective Date**”). EZDERM and Medical Practice may be referred to herein each individual as a “**Party**” and together as the “**Parties**”.

Recitals. EZDERM is the owner of certain proprietary software, and EZDERM, either directly or indirectly, offers certain services, all of which are more specifically described on Medical Practice’s Order Form(s). EZDERM desires to provide Medical Practice access and Medical Practice desires access to the Software, Services, Subscription, Support, and such other services and products set forth on an Order Form.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **DEFINITIONS.** In addition to terms defined elsewhere in this Agreement, for purposes of this Agreement, unless the context otherwise requires, the following defined terms shall have the meanings set out below:
 - 1.1 “**Administrative Support Personnel**” shall mean an individual employed by Medical Practice that is not a Provider, as well as representatives, consultants, contractors, or agents of the Medical Practice who are treated as either Workforce of Medical Practice or Business Associates (each as defined at 45 C.F.R. § 160.103) of the Medical Practice, who requires access to the Software to perform their job duty for Medical Practice.
 - 1.2 “**Authorized User(s)**” shall mean individually or collectively, as the case may be, Administrative Support Personnel and/or Providers, who are authorized by Medical Practice to access and use the Software and Services under the rights granted to Medical Practice pursuant to this Agreement and as more specifically set forth on an Order Form or as designated by Medical Practice in the Software. Medical Practice shall not permit any person or entity, other than Authorized Users, to access or use the Software.
 - 1.3 “**Documentation**” shall mean EZDERM’s standard and then current training materials, user manuals, handbooks, guides and technical specifications for the Software.
 - 1.4 “**Fees**” shall have the meaning set forth in the Order Form and Section 4 hereof.
 - 1.5 “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996, the American Recovery and Reinvestment Act of 2009, also known as the Health Information Technology for Economic and Clinical Health Act, and the privacy, security, breach notification, and enforcement regulations promulgated pursuant thereto at 45 C.F.R. Parts 160, 162, and 164.
 - 1.6 “**Increase in CPI**” shall mean the unadjusted percentage increase, if any, in the Consumer Price Index for All Urban Consumers: U.S. City Average, All Items, 1982-1984 = 100 (“**CPI-U**”) for the month of the Effective Date when compared to the CPI-U for the Reference Month for the preceding calendar year, based upon the specific CPI-U data published by the United States Bureau of Labor Statistics (“**BLS**”) on its website located at <https://www.bls.gov/cpi/> (or any BLS successor website).
 - 1.7 “**Malicious Code**” shall mean viruses, worms, time bombs, Trojan horses, and other harmful or malicious



code, files, scripts, agents, applications, or programs.

- 1.8 **“Medical Practice”** shall mean the entity designated as the Medical Practice in the Order Form.
- 1.9 **“Medical Practice Data”** shall mean all proprietary and confidential information and data concerning Medical Practice, including all protected health information (as defined at 45 C.F.R. § 160.103) and personally identifiable information of providers, entered into the Software by or on behalf of Medical Practice in connection with the Subscription. Medical Practice Data does not include Aggregate Data, which meaning is set forth in Section 5.4.
- 1.10 **“National Provider Identification Standard (NPI)”** shall mean a unique identification number for covered health care providers and covered health care providers and all health plans and health care clearinghouses must use the NPI numbers in the administrative and financial transactions adopted under HIPAA. The NPI is a 10-position, intelligence-free numeric identifier (10-digit number). This means that the numbers do not carry other information about healthcare providers, such as the state in which they live or their medical specialty. The NPI must be used in lieu of legacy provider identifiers in the HIPAA standards transactions.
- 1.11 **“Order Form”** shall mean the EZDERM order form that sets forth the Medical Practice’s name and contact information, Providers, Services, Software, Support, payment information, term, and such other terms and conditions. Each Order Form shall be deemed to be attached hereto and incorporated herein by this reference and shall be subject to and governed by the terms and conditions of this Agreement.
- 1.12 **“Provider”** shall mean any of the following individuals providing services to or through the Medical Practice: a physician, nurse practitioner, physician assistant, or other medical professional who provides services within the medical field and has an NPI number. The identity of the Provider may be changed by Medical Practice either through the Software or upon written notice to EZDERM. The term “Provider” shall not include Administrative Support Personnel.
- 1.13 **“Services”** shall mean those services, including, Standard Implementation Scope of Services and Professional Services (as defined in Section 3), provided by EZDERM to Medical Practice in accordance with the terms and conditions of this Agreement that are ordered by Medical Practice pursuant to an Order Form or a written quote or statement of work (collectively, **“SOW”**). Each SOW shall be deemed to be attached hereto and incorporated herein by this reference and shall be subject to and governed by the terms and conditions of this Agreement.
- 1.14 **“Service Guidelines”** shall mean the following guidelines: Medical Practice and its Authorized Users shall use the Software and any Services provided by EZDERM solely for Medical Practice’s internal business purposes as contemplated by this Agreement and shall not use the Software or any Services provided by EZDERM to: (i) send spam or any other form of duplicative or unsolicited communications; (ii) violate any law, rule or regulation; (iii) transmit through or post on the Software or EZDERM’s website(s) unlawful, immoral, libelous, tortious, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors; (iv) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (v) interfere with or disrupt the integrity or performance of the Software or the data contained therein; (vi) attempt to gain unauthorized access to the Software, computer systems or networks used to host or provide access to the Software; or (vii) harass or interfere with another user’s use and enjoyment of the Software or the services provided by EZDERM.
- 1.15 **“Software”** shall mean the then-current version (inclusive of any Updates, Upgrades or modifications thereto) of those computer program modules and accompanying graphical user interfaces, screen displays, application and platform and such other software ordered by Medical Practice solely pursuant to an Order Form and this Agreement. The term **“Software”** shall also refer to the EZDERM application made available by EZDERM through the Apple **“App Store”** or such other app store which may be added by EZDERM, in its sole discretion, from time to time.
- 1.16 **“Standard Implementation Scope of Services”** shall mean the standard and then current scope of implementation services provided by EZDERM to Medical Practice as referred to in Section 3 hereof and the Order Form.



- 1.17 “**Subscription**” shall mean the paid subscription to the Software pursuant to Section 2 hereof via a EZDERM controlled access website, an iOS application, and as more specifically described in the Documentation and Order Form.
- 1.18 “**Support**” shall mean the standard and then current training, consultation, and support provided by EZDERM or its agents in connection with the Subscription and Software, that are provided pursuant to this Agreement and any applicable Order Form.
- 1.19 The “**Term**” and any renewal rights of this Agreement shall have the meaning set forth in Section 10 hereof and the Order Form.
- 1.20 “**Terms of Use**” shall mean the then-current version of EZDERM’s terms of use, located at the following URL: <https://ezderm.com/terms-conditions/>.
- 1.21 “**Updates**” shall mean updates, patches, bug fixes, feature fixes and minor software enhancements and compatibility (but excluding Upgrades) of the Software that EZDERM releases commercially and as determined by EZDERM in its sole discretion.
- 1.22 “**Upgrades**” shall mean a new version of the software that offers a significant change or major improvement over the current version of the Software and as determined by EZDERM in its sole discretion.

2 SUBSCRIPTION, RESTRICTIONS, LIMITATIONS, AND SERVICE SUSPENSION.

- 2.1 **Provision of Subscription.** Subject to and conditioned on Medical Practice’s timely payment of the Fees in accordance with Section 4 hereof and compliance with the terms and conditions of this Agreement, EZDERM grants to Medical Practice and its Authorized Users a restricted, revocable, non-exclusive, non-transferable, non-sublicensable right and license to access and use the Software, Subscription, and Documentation in accordance with this Agreement, including **Attachment A**, attached hereto and incorporated herein by this reference, the Terms of Use and the Documentation for the Term solely for Medical Practice’s internal business use. Unless otherwise specified in the applicable Order Form, (i) the Software may be accessed by no more than the specified number of named Authorized Users for whom Medical Practice has subscribed and for whom Fees have been paid, (ii) additional Subscriptions for additional named Authorized Users may be added at the then current EZDERM pricing for Subscriptions, and (iii) each Authorized User Subscription for the Software is for a specific designated and named individual and cannot be shared or used by more than one individual, but may be reassigned to a new Authorized User replacing a former Authorized User who no longer requires use of the Software. Medical Practice agrees that its Subscription(s) for the Software under this Agreement and any Order Form are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments by EZDERM regarding functionality or features and EZDERM may, in its sole discretion, discontinue any functionality or feature of the Software.
- 2.2 **Reservation of Rights.** EZDERM reserves all rights not expressly granted to Medical Practice in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Medical Practice or any third party any intellectual property rights or other right, title, or interest in or to the Software, Services, Subscription, and Documentation and, together with its codes, sequences, derivative works, organization, structure, interfaces, any documentation, data, trade names, trademarks, or other related materials (collectively, the “**EZDERM IP**”). Medical Practice acknowledges that all right, title, and interest in and to the EZDERM IP, is, and at all times shall remain, the sole and exclusive property of EZDERM.
- 2.3 **Medical Practice Responsibilities.** Medical Practice shall: (i) be responsible and liable for all uses of the Subscription, Software, Services, Support, and Documentation resulting from access provided by Medical Practice to any Authorized User or third party, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement; (ii) be responsible and liable for Authorized Users’ compliance with this Agreement; (iii) be solely responsible for the accuracy, quality, integrity, and legality of Medical Practice Data and of the means by which it acquired or uses Medical Practice Data; (iv) prevent unauthorized access



to or use of the Software, and immediately notify EZDERM promptly of any such unauthorized access or use; (v) use the Software only in accordance with the Documentation and applicable laws and government regulations; (vi) be responsible for all acts and omissions of Authorized Users, and any act or omission by a Authorized User that would constitute a breach of this Agreement if taken by Medical Practice, which will be deemed a breach of this Agreement by Medical Practice; (vii) make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Subscription, Software, Services, Support, or Documentation, and shall cause all such Authorized Users to comply with such provisions; and (viii) be solely responsible for gaining access to or use of the Services, Subscription or Software, Support, and EZDERM shall bear no responsibility or liability for problems arising from or related to Medical Practice's access or use thereof. During the Term, Medical Practice will deploy, at its sole expense, a reputable industry recognized, non-free-ware, anti-virus solution. Such anti-virus solution must automatically obtain daily virus definition updates and load such updates on all of Medical Practice's computer and other devices. EZDERM reserves the right to audit, at any time, Medical Practice's computer and other devices to determine compliance with this Section 2.3. If Medical Practice fails to adhere to this Section 2.3, EZDERM may deny Medical Practice's access to or use of EZDERM's system, the Software, and the Subscription for those devices that do not have anti-virus with active automatic updates until such time as Medical Practice deploys an anti-virus solution pursuant to this Section 2.3

2.4 Medical Practice Restrictions. Medical Practice shall not use the Services, Software, Subscription, Support or the Documentation for any purposes beyond the scope of the access granted in this Agreement and shall only use the Services, Software, Subscription, Support or the Documentation in compliance with this Agreement and the Terms of Use. Medical Practice shall not (i) make the Software and Documentation available to any third party other than Authorized Users; (ii) use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy and medical records (e.g., HIPAA) rights; (iii) store or transmit Malicious Code in or to the Software, and Medical Practice shall ensure that Malicious Code is not inadvertently or unintentionally stored in or transmitted to the Software; (iv) interfere with or disrupt the integrity or performance of the Software, Services, Subscription, or third-party data contained therein; (v) attempt to gain unauthorized access to the Software, the Documentation, EZDERM's related systems or networks, or any third-party software or platforms; (vi) send spam or any other form of duplicative or unsolicited communications; (vii) violate any law, rule or regulation, including HIPAA; (viii) transmit through or post on the Software or EZDERM's website(s) unlawful, immoral, libelous, tortious, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors; (ix) interfere with or disrupt the integrity or performance of the Software or the data contained therein; or (x) harass or interfere with another user's use and enjoyment of the Software or the Services provided by EZDERM. EZDERM may, without liability or notice to Medical Practice, remove or delete any material, including Medical Practice Data, stored in the Software that EZDERM determines, in its sole discretion, violates any of the guidelines set forth in this Agreement, including conduct that is Prohibited Conduct or violates the Service Guidelines provided however, prior to removing or deleting any Protected Health Information from the Software, EZDERM shall first either retain a copy of such information outside of the Software and provide such copy to Medical Practice or provide Medical Practice with prior written notice of the impending removal or deletion and a reasonable opportunity to copy such information prior to removal or deletion. In addition to any other remedies EZDERM may have, EZDERM reserves the right to terminate any or all of the logins provided to Medical Practice or any Authorized User immediately and without notice, if EZDERM becomes aware or determines that Medical Practice or any Authorized User is violating any of the foregoing guidelines. Medical Practice shall be responsible for verifying the accuracy of results produced using the Software and for proper use of any forms provided by EZDERM. EZDERM will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Medical Practice or any Authorized User may incur as a result of any terminations or suspensions described in this Section 2.4.

2.5 Limitations on Use. Medical Practice shall not at any time, attempt, directly or indirectly, and shall not permit any third party to attempt to: (i) copy, modify, or create derivative works of the Services, Software, Subscription, or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services, Software, Subscription, or Documentation, in whole or in part; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software or proprietary component of the Services,



Software, Subscription, or Documentation, in whole or in part; (iv) remove any proprietary notices from the Services, Software, Subscription, or Documentation; (v) use the Services, Software, Subscription, or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (vi) use the Services, Software, Subscription, or Documentation to develop a similar or competing product, software, or service; (vii) provide access to the Services, Software, Subscription, or Documentation to any person or third party in order to build or assist in building a competitive service or software to the Services, Software, Subscription, or Documentation or to benchmark with a non-EZDERM service or software; (viii) use the Services, Software, Subscription, or Documentation on behalf of, or to provide any product or service to, third parties; (ix) use the Services, Software, Subscription, or Documentation to transmit or display any false, inaccurate, or unlawful information; (x) translate, adapt, vary, or modify the Software or Documentation, other than as necessary to customize reports or remove or add fields as permitted by the Software and the Documentation; (xi) permit the use of the Software other than by Medical Practice's Authorized Users; or (xii) violate the terms and conditions of this Agreement or any terms and conditions posted on the Services, Software, Subscription, or Documentation, including, without limitation, any Terms of Use (collectively, "**Prohibited Conduct**").

2.6 **Service Suspension.** Notwithstanding anything to the contrary in this Agreement, EZDERM may temporarily suspend Medical Practice's and any Authorized User's access to any portion or all of the Services, Software, Subscription, Documentation, or Support if: (i) EZDERM determines that (A) there is a threat or attack on any of the EZDERM IP; (B) Medical Practice's or any Authorized User's use of the EZDERM IP disrupts or poses a security risk to the EZDERM IP or to any other Medical Practice or vendor of EZDERM; (C) Medical Practice, or any Authorized User, is using the EZDERM IP for fraudulent or illegal activities or Prohibited Conduct; (D) Medical Practice, or any Authorized User, is violating the terms of this Agreement, the Terms of Use or EZDERM's privacy policy located at <https://ezderm.com/privacy/>; (E) subject to applicable law, Medical Practice has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (F) EZDERM's provision of the Services, Software, Subscription, or Support to Medical Practice or any Authorized User is prohibited by applicable law; (ii) any vendor of EZDERM has suspended or terminated EZDERM's access to or use of any third-party services or products required to enable Medical Practice to access the Services, Software, Subscription, or the Support; or (iii) in accordance with Section 4 (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). EZDERM shall use commercially reasonable efforts to provide written notice of any Service Suspension to Medical Practice and to provide updates regarding resumption of access to the Services, Subscription, the Support, or the Software following any Service Suspension. EZDERM shall use commercially reasonable efforts to resume providing access to the Services, Subscription, the Support, or the Software as soon as reasonably possible after the event giving rise to the Service Suspension is cured. EZDERM will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Medical Practice or any Authorized User may incur as a result of a Service Suspension. In addition to any other remedies EZDERM may have, EZDERM reserves the right to terminate any or all of the logins provided to Medical Practice or any user immediately and without notice, if EZDERM becomes aware or determines, in its sole discretion, that Medical Practice or any user is violating any of the foregoing guidelines or any of its conduct constitutes Prohibited Conduct. Medical Practice shall be responsible for verifying the accuracy of results produced using the Software and for proper use of any forms provided by EZDERM.

2.7 **Ownership and Return of Medical Practice Data.** All the Medical Practice Data created and/or stored by the Software will be solely owned by Medical Practice. Upon termination of this Agreement and within a reasonable period of time agreed to by the Parties, which shall not be shorter than thirty (30) business days unless explicitly agreed to by EZDERM, EZDERM agrees to use commercially reasonable efforts to provide Medical Practice, at EZDERM's cost and expense, with a copy of all of the Medical Practice Data contained in the Software, in a form and format that is technologically feasible to be provided by EZDERM and is mutually acceptable to the Parties. In the event EZDERM is not able to provide Medical Practice with a copy of all Medical Practice Data, including in the form of a Portable Document Format (i.e., PDF) or paper copy, EZDERM will provide Medical Practice with view only access (upon Medical Practice's specific request and solely at the time such access is necessary to fulfill patient care or legal or regulatory obligations by Medical



Practice) to such Medical Practice Data, for so long as Medical Practice is required by applicable law to retain such data. Additional requests for a data extraction will be invoiced to the Medical Practice at EZDERM’s then current rates. After termination and for a period not to exceed thirty (30) days or at a later date agreed upon in writing by the Parties, which agreement may be withheld by EZDERM, except in instances where an extraction delay is caused by EZDERM, EZDERM will allow the Medical Practice to have full access to the Software until the initial patient data export is completed and provided to Medical Practice.

3 INSTALLATION, SUPPORT, IMPLEMENTATION SERVICES AND PROFESSIONAL SERVICES.

3.1 Support Services and Minimum Service Levels. During the Term and subject to the terms and conditions of this Agreement, EZDERM shall use commercially reasonable efforts to provide to Medical Practice the following Support Services subject to the Minimum Service Level (as herein after defined):

Support Service	Access via	Access hours
EZDERM Phone Support	Dial 877-443-9337, extension 2	Monday to Friday, 8:30AM to 8:00PM EST
EZDERM Online Helpdesk	https://ezderm.zendesk.com/hc/en-us	24x7 access and responses will be Monday to Friday, 8:30AM to 8:00PM EST

3.1.1 Description of Support. Other than on federally recognized holidays or holidays recognized by EZDERM, EZDERM will use commercially reasonable efforts to provide telephone help desk and online support services between the hours of 8:30 a.m. and 8:00 p.m., Eastern Time, Monday through Friday. Other than on federally recognized holidays or holidays recognized by EZDERM, an EZDERM client support representative shall provide an initial response to a support ticket submitted through the telephone help desk or online support portal within eight (8) business hours of EZDERM’s receipt of such support ticket.

3.1.2 Service Levels. EZDERM shall use commercially reasonable efforts to provide 99% Software availability during each calendar month during the Term (the “**Minimum Service Level**”) except for: (a) planned down time, for which EZDERM shall use reasonable commercial efforts to be outside of normal business hours (business days during 8:00 a.m. to 8:00 p.m., Eastern Time) and for which EZDERM uses reasonable commercial efforts to give reasonable notice on its website(s), by email or otherwise that the Software will be unavailable; (b) down time caused by a vulnerability or major defect in the Software which, based on a risk assessment of the vulnerability or critical nature of the defect, EZDERM deems, in its sole discretion, to require immediate remediation or results from circumstances beyond EZDERM’s reasonable control, including without limitation, a Force Majeure Event (as defined in Section 11.6), computer or telecommunications failures or delays involving hardware or software not within EZDERM’s possession or reasonable control, and network intrusions or denial of service attacks; (c) downtime caused by third party vendors, including the failure of third party vendor APIs; or (d) the inability of Medical Practice to access the Software due to Internet, telecommunications, hardware, software, user error, or other issues outside the reasonable control of EZDERM or its hosting provider. If EZDERM fails to meet the Minimum Service Level for any calendar month during the Term as reasonably determined by EZDERM by reference to its server logs and other technical data, Medical Practice’s sole and exclusive remedy shall be for Medical Practice to receive a pro-rata decrease in its Subscription Service Fees for the calendar month following the calendar month in which such deficiency occurs, of up to the 20% of Medical Practice’s Software Subscription Fees for such calendar month. The pro-rata decrease will be calculated so that a 1% deficiency from the Minimum Service Level (e.g., 98% vs 99%) equals a decrease that is equal to 1% of the Software Subscription Fees payable with respect to the applicable calendar month. All such decreases shall be applied against Medical Practice’s account as a credit. To receive the credits described in this paragraph, Medical Practice must notify EZDERM in writing of its credit request within ten (10) days from the end of the



calendar month in which such deficiency occurred. Failure to comply with this written notice requirement will forfeit Medical Practice's right to receive a credit. Credits will be applied against amounts otherwise payable by Medical Practice after the date of such request and in no event shall EZDERM, as a result of a credit request, be required to refund any amounts previously paid by Medical Practice to EZDERM. This Minimum Service Level and associated credits shall not apply to any "beta" or similar in development versions of the Software that EZDERM may make available for evaluation purposes. This Minimum Service Level will be in effect until and unless superseded by a revised Minimum Service Level, at the discretion of EZDERM, at any time. All revisions to this Minimum Service Level will be first published to EZDERM's website and may also be communicated to Medical Practice by email; however, all Medical Practice have the responsibility to monitor for such updates on the website. EZDERM SHALL ABIDE BY THE MINIMUM SERVICE LEVEL SET FORTH HEREIN AND PROVIDE THE CREDITS/REDUCTIONS TO MEDICAL PRACTICE AS SET FORTH THEREIN. THE REMEDIES SET FORTH IN THE MINIMUM SERVICE LEVEL ARE EXCLUSIVE AND MEDICAL PRACTICE'S SOLE REMEDIES AND EZDERM'S SOLE LIABILITY UNDER THE MINIMUM SERVICE LEVELS.

- 3.1.3 **Holidays.** Client support representatives will not be available during all federally recognized holidays and the following holidays currently observed by EZDERM: (i) New Year's Day, (ii) Memorial Day, (iii) Independence Day, (iv) Labor Day, (v) Veterans Day, (vi) Thanksgiving Day, (vii) the day after Thanksgiving Day, and (viii) Christmas Day.
- 3.2 **Additional Support.** Subject to the terms and conditions of this Agreement, personalized telephone and/or on-line or on-site training and support for the Software may be available on an as-needed basis for each Authorized User for the Fees for Support as ordered by Medical Practice pursuant to an Order Form or SOW. In addition, live training in the use of the Software may be available on an as-needed basis for each Authorized User for the Fees for Support as ordered by Medical Practice pursuant to an Order Form or SOW. The Fees for additional support and training will be at EZDERM's then-listed hourly rate plus expenses, unless otherwise agreed in the applicable Order Form or SOW.
- 3.3 **Professional Services.** Subject to the terms and conditions of this Agreement, EZDERM shall provide any implementation, integration, consulting, billing or other professional services ("**Professional Services**") to Medical Practice as described on the Order Form or an SOW.
- 3.4 **Implementation Services.** Subject to the terms and conditions of this Agreement, EZDERM shall provide the Standard Implementation Scope of Services to Medical Practice as described on the Order Form.
- 3.5 **Contractors.** EZDERM may use contractors to perform all or any part of the Services, Subscription, Professional Services, Support, such other services or in connection with the performance of its obligations under this Agreement or any Order Form or SOW.
- 3.6 **Upgrades and Updates.** During the Term and provided Medical Practice is current on all of its Fees, EZDERM will provide Medical Practice with Updates without additional fees and will provide Upgrades, with or without additional fees, as determined by EZDERM in its sole discretion. To the extent there are any fees associated with such Upgrade, the Parties will enter into a written amendment or applicable online ordering form setting forth the pricing and description of the applicable Upgrade. The Software may be updated automatically once a new Update or free versions of Upgrade is available. Updates and Upgrades will become part of the Software and will be subject to the provisions of Section 2 and the other provisions of this Agreement. Medical Practice agrees to install new Updates and free versions of Upgrades immediately upon their availability in the Apple App Store.
- 3.7 **Installation.** Prior to the Software installation, including the Standard Implementation Scope of Services, Medical Practice shall ensure that all hardware and Internet access is installed and set up properly and in accordance with this Section 3.7 and the Documentation. Medical Practice shall be responsible for any delays due to its failure to perform a timely and proper set up and this will result in rescheduling of installation, training dates and travel arrangements, including but not limited to onsite training fees that are



rescheduled or canceled. Medical Practice will incur any expenses and costs incurred by EZDERM resulting from having to reschedule such dates. Minimum hardware and network specifications are:

Minimum Hardware Required:	Apple iPad series product with the ability to run the most recent version of Apple's iOS.
Minimum Network Required:	High speed internet connection with an upload and download speed of at least 15 Mbps (millions of bits per second).

4. FEES AND PAYMENT TERMS.

- 4.1 **Fees.** Medical Practice shall pay all Fees as specified in all Order Forms or SOWs hereunder, without set off or deduction. Except as otherwise specified herein or in an Order Form or an SOW, (i) Fees are quoted and payable in United States dollars; (ii) Fees for the Subscription and Fees for Support are based upon the number of Providers and Authorized Users and number and types of Subscriptions, Support, and Services; (iii) payment obligations for Support, Services, and Subscriptions ordered pursuant to Order Forms or SOWs are non-cancelable and all Fees paid are non-refundable; and (iv) additional Subscriptions for the Software for additional Authorized Users may be added at the then current EZDERM pricing for the current Subscriptions. Unless otherwise set forth in the Order Form, Fees for Support and Subscriptions for Users are on an annual basis. After the initial twelve (12) months of the Term, the Fees shall increase for each subsequent 12 month period by the greater of (i) five percent (5%) and (ii) the Increase in CPI *plus* two percent (2%) to account for inflation, development enhancements, increased costs of doing business, and otherwise.
- 4.2 **Invoicing and Payment.** Except as otherwise specified herein or in an Order Form or SOW, Fees for the Subscription will be charged each month in advance on the first day of such month and shall be due and payable on such date, and all such Fees shall be paid in accordance with the applicable payment authorization form: (i) by charge to Medical Practice's credit card, (ii) by check from Medical Practice, or (iii) by ACH to the account designated by EZDERM in writing. Medical Practice agrees to provide authorization to EZDERM to charge Medical Practice for the Fees via credit card or ACH, as applicable. Fees for Services or Support will be paid in the same manner as described above for Fees for Subscription or will be invoiced in advance and otherwise in accordance with the relevant Order Form or SOW. Unless otherwise stated in the Order Form or SOW, all Fees and any related costs are due net thirty (30) days from the invoice date. Medical Practice is responsible for maintaining complete and accurate billing and contact information in the Software.
- 4.3 **Overdue Payments.** Any past due payment owed by Medical Practice to EZDERM hereunder (an "**Overdue Payment**") shall accrue, late charges at the rate of one and one-half percent (1.5%) of the outstanding principal balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. In addition, for any Overdue Payment, (i) Medical Practice shall reimburse EZDERM for all reasonable costs incurred by EZDERM in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees and (ii) EZDERM may condition future subscription renewals and Order Forms and SOWs on payment terms shorter than those specified in Section 4.2 above.
- 4.4 **Suspension of Service.** If Medical Practice's account becomes more than ten (10) days in arrears, in addition to any of its other rights or remedies available at law in equity or hereunder, EZDERM reserves the right to suspend Medical Practice's and/or its Authorized Users' access to the Software, Support, Services, or Subscription until such amounts are paid in full or terminate this Agreement. During any suspension, EZDERM shall continue to maintain and make available to Medical Practice for viewing the Medical Practice Data (except, for avoidance of doubt, in the event of termination, Medical Practice Data will be returned as set forth in this Agreement). Upon payment in full of all outstanding amounts, full access to all functionality of the Software will be restored.



- 4.5 **Taxes.** All Fees are exclusive of all local, state, federal and foreign taxes, levies, duties of any nature or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes assessable by any federal, state, provincial, local, or foreign jurisdiction ("**Taxes**"). Medical Practice is responsible for payment of all Taxes, excluding taxes owed by EZDERM based on EZDERM's net income. If EZDERM has the legal obligation to pay or collect taxes for which Medical Practice is responsible pursuant to this Section 4.5, the appropriate amount shall be invoiced to and paid by Medical Practice unless Medical Practice provides EZDERM with a valid tax exemption certificate authorized by an appropriate taxing authority prior to the payment of any applicable Taxes.
- 4.6 **Travel Expense Recovery.** Unless otherwise set forth in the Fees for Services, any pre-approved and reasonable travel and entertainment expenses incurred on behalf of this Agreement will be charged-back to Medical Practice without markup and will be payable within thirty (30) days of the date of a written invoice.
- 4.7 **No Offset.** Under no circumstances shall Medical Practice withhold any sums due under this Agreement, whether by means of set-off or otherwise, nor shall it pay any sums due under this Agreement to any third party instead of EZDERM, without the prior written consent of EZDERM or as required by court order. Any sums so withheld or paid to a third party shall accrue interest under Section 4.3 until received by EZDERM.
- 4.8 **Invoices.** Invoices to the Medical Practice will be sent via email and will be addressed to the billing contact / department information set forth on the Order Form.

5. PROPRIETARY RIGHTS

- 5.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, EZDERM reserves all rights, title, and interest in and to the Software, Documentation, Services, Support, and products and services thereof, including all EZDERM IP. No rights are granted to Medical Practice hereunder other than as expressly set forth herein.
- 5.2 **Feedback.** If Medical Practice or any of its employees, consultants, agents, or contractors sends or transmits any communications or materials to EZDERM by mail, email, telephone, or otherwise, suggesting or recommending changes to the EZDERM IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), EZDERM is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Medical Practice hereby assigns to EZDERM on Medical Practice's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and EZDERM is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although EZDERM is not required to use any Feedback.
- 5.3 **Ownership of Medical Practice Data; Protection of Medical Practice Data.** As between EZDERM and Medical Practice, Medical Practice exclusively owns all rights, title, and interest in and to all Medical Practice Data. During the Term, EZDERM may receive access to the Medical Practice Data and may use and disclose such Medical Practice Data as set forth herein. Medical Practice represents and warrants that it has complied with all applicable laws, including but not limited to data protection and healthcare laws and regulations, including HIPAA, and has and will obtain consents and all right, title, and interest in and to any Medical Practice Data provided hereunder, which may be necessary for EZDERM to process such Medical Practice Data for the purposes set forth herein, including in connection with the analysis and monitoring of Medical Practice's and its Authorized Users' use of the Software, Services, Support, and the Subscription and in connection with the business and information security operations of Medical Practice and EZDERM. Medical Practice is and will remain solely responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Medical Practice Data by EZDERM provided that such actions are in accordance with this Agreement or under Medical Practice's control or within its possession. EZDERM will maintain reasonable and appropriate security standards to protect the security and integrity of the Medical Practice Data, and it will provide Medical Practice reasonably requested documentation of these processes and any security reviews or audits made of EZDERM's systems, all of



which documentation and information shall be deemed EZDERM Confidential Information and none of which documentation and information will include documentation or information that could or would cause vulnerability to EZDERM's systems. EZDERM and its authorized employees and contractors shall only process, access, and use Medical Practice Data for purposes of providing the Services, Subscription, Software and activities reasonably related thereto, and other associated services under this Agreement. EZDERM shall not collect, use, retain, disclose, sell (for monetary or other valuable consideration), or otherwise make such Medical Practice Data available for EZDERM's own commercial purposes, except as otherwise set forth in this Agreement, including Section 5.4, or as otherwise is necessary to comply with applicable law. EZDERM shall use commercially reasonable efforts to promptly comply with any reasonable request from the Medical Practice requiring EZDERM to provide, amend, transfer, or delete the Medical Practice Data and assist with Medical Practice Data's obligations to respond to individual's exercising their privacy rights, each as required by applicable law.

5.4 Aggregate Data and Benchmarking. Notwithstanding anything to the contrary in this Agreement, EZDERM may aggregate or deidentify Medical Practice Data, create statistical reports, benchmarking and other data reports and solutions relating to the Software or the Subscription utilizing transaction data and usage data, so long as such aggregated data sets, reports, and solutions contain only anonymous data that does not identify Medical Practice, a specific Authorized User, and has been deidentified in accordance with HIPAA ("**Aggregate Data**"). Notwithstanding any other limitation set forth herein, EZDERM shall full ownership, right, and title to the Aggregate Data (including derivatives thereof) and may report, deliver, publish, and sell such Aggregate Data to third parties or use such Aggregate Data without limitation for any lawful purpose. EZDERM may, from time to time, offer benchmarking programs to facilitate deeper analysis into commercial trends for companies wishing to participate. If applicable, EZDERM will use commercially reasonable efforts to operate benchmarking programs and data reports and solutions according to reasonable industry standards that protect the confidentiality of each Medical Practice's Confidential Information. EZDERM shall further not attempt to or actually re-identify any previously aggregated, deidentified, or anonymized data and will contractually so require downstream recipients of any such data (including such data contained in any reports or benchmarking programs described in this Section 5.4). All Aggregate Data and associated reports described in this Section 5.4 shall be EZDERM's Confidential Information and shall not be considered Confidential Information of Medical Practice.

6. CONFIDENTIALITY.

6.1 Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Medical Practice shall include Medical Practice Data; Confidential Information of EZDERM shall include the Software, the Documentation, EZDERM IP, and the Support and such other EZDERM products and services; and Confidential Information of each Party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. Confidential Information does not include information that is: (a) in the public domain other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (b) rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement at the time of disclosure; (c) rightfully obtained by the Receiving Party on a non-confidential basis from a third party that to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other contemporaneously-created documentary records was independently developed by the Receiving Party without reference to or use of any Confidential Information of the Disclosing Party. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees, contractors, directors, or other representatives, who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations hereunder, or as otherwise may be necessary related to the Receiving Party's legitimate business operations (collectively, "**Representatives**"). Medical Practice shall require all Representatives and Users to execute an agreement protecting the confidentiality of the EZDERM



Confidential Information and with license and use restrictions consistent with the confidentiality and terms of this Agreement and shall be responsible for the acts and omissions of any such Representatives.

- 6.2 **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to its Representatives, who have a need to know such Confidential Information.
- 6.3 **Compelled Disclosure.** Notwithstanding anything to the contrary in this Section 6, the Receiving Party may disclose Confidential Information of the Disclosing Party if the Receiving Party is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted and practicable) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.
- 6.4 **Return and Destruction of Confidential Information.** Upon termination of the Agreement, EZDERM shall have obligations related to providing Medical Practice with a copy of the Medical Practice Data, as set forth in Section 2.7 of this Agreement. Other than as necessary to fulfill such obligations, and to the extent feasible, EZDERM shall destroy all Medical Practice Confidential Information within a reasonable period of time after the termination of this Agreement. Notwithstanding the foregoing, EZDERM may retain any copies of Confidential Information, including Medical Practice Data, regardless of whether such copies are in original form, (i) reasonably necessary in respect of any litigation arising out of this Agreement; (ii) as may be required to comply with any applicable federal, state, or local law, regulation, or regulatory authority to which EZDERM is subject; and (iii) that are maintained as archive copies on EZDERM's disaster recovery and/or information technology backup systems.

7. WARRANTIES.

- 7.1 **EZDERM Warranties.** EZDERM will maintain the confidentiality of information regarding any physician or patient records. EZDERM warrants that the Services, Professional Services and Support provided hereunder will be performed in a competent and workmanlike manner in accordance with generally accepted industry standards.
- 7.2 **Mutual Warranty.** Each Party represents and warrants that it has the legal power and authority to enter into this Agreement.
- 7.3 **Medical Practice Warranties.** Medical Practice represents and warrants to EZDERM that (i) Medical Practice has full right, title, and interest in and to the Medical Practice Data it supplies to EZDERM or enters into the Software; (ii) the Medical Practice Data supplied by Medical Practice to EZDERM hereunder or entered into the Software is accurate and complete; (iii) Medical Practice and Medical Practice's use of the Software, Documentation, Subscription, and Services will comply with all applicable federal, state, county, and local laws, ordinances, orders, codes, rule, and regulations; (iv) Medical Practice will use the Software, Documentation, Subscription, and Services strictly in accordance with the terms of this Agreement; (v) Medical Practice will not engage in any Prohibited Conduct; (vi) no Medical Practice Data will infringe the intellectual property rights or other rights of any third party; (vii) Medical Practice has secured all necessary licenses, consents, and/or authorizations for EZDERM to use the Medical Practice Data pursuant to the terms of this Agreement; (viii) Medical Practice holds, and will continue to hold, all necessary consents, licenses, permits, approvals, and/or authorizations required in order to perform any and all activities permitted under this Agreement; (ix) Medical Practice shall inform all of Medical Practice's personnel (including, but not limited to, any agents of Medical Practice and all Authorized Users) using the Software, Documentation, Subscription, and Services that the use of the Software, Documentation, Subscription, and Services is subject



to the terms of this Agreement and the Terms of Use, and shall ensure compliance by such personnel (including, but not limited to, any agents of Medical Practice and all Authorized Users) with the terms of this Agreement and the Terms of Use; (x) the performance by Medical Practice of its obligations under this Agreement, will not violate any provision of any existing law or regulation or any order or decree of any court or the organizational documents of such Party, or constitute a material breach of any mortgage, indenture, contract, or other agreements to which Medical Practice is a party or by which Medical Practice is bound; and (xi) neither Medical Practice nor its Authorized Users will transmit to EZDERM any Malicious Code.

7.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE ABOVE LIMITED WARRANTY SET FORTH IN SECTION 7.1, THE ENTIRE RISK OF THE QUALITY AND PERFORMANCE OF THE SOFTWARE, SERVICES, SUPPORT AND PRODUCTS IS WITH MEDICAL PRACTICE. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION 7, THE EZDERM IP (INCLUDING, BUT NOT LIMITED TO, THE SERVICES, SUPPORT, ADDITIONAL SERVICES, DOCUMENTATION, SOFTWARE AND SUBSCRIPTION) IS PROVIDED “AS IS” AND EZDERM AND EZDERM’S AFFILIATES, SUBSIDIARIES, NOMINEES AND/OR RELATED PARTIES, AND ANY PROVIDERS OF INFORMATION OR SERVICES TO EZDERM DISCLAIM ALL WARRANTIES, EITHER EXPRESS, IMPLIED STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7.1, EZDERM MAKES NO WARRANTY OF ANY KIND THAT THE EZDERM IP (INCLUDING, BUT NOT LIMITED TO, THE SERVICES, SUPPORT, ADDITIONAL SERVICES, DOCUMENTATION, SOFTWARE, AND SUBSCRIPTION), OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET MEDICAL PRACTICE’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, UNINTERRUPTED, OR ERROR FREE OR THAT ERRORS IN THE SOFTWARE OR PRODUCTS OF THE SUPPORT WILL BE CORRECTED. EZDERM’S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF EZDERM FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE, THE SERVICES, OR PRODUCTS OF THE SUPPORT. THE PARTIES AGREE THAT THE FAILURE OF THE SOFTWARE TO PERFORM IN ACCORDANCE WITH THE DOCUMENTATION OR A DECREASE IN THE FUNCTIONALITY OF THE SOFTWARE WHICH CANNOT BE REMEDIED SHALL NOT BE CONSIDERED A FAILURE OF THE ESSENTIAL PURPOSE OF THE REMEDIES CONTAINED HEREIN.

7.5 Exclusions. EZDERM provides no warranty regarding, and will have no responsibility for, any claim arising out of: (i) a modification of the Software, Support, Subscription, Documentation, or the Services made by anyone other than EZDERM, unless EZDERM approves such modification in writing; or, (ii) use of the Software, Support, Subscription, Documentation, or the Services in combination with hardware, software, or other technology not provided by EZDERM: (A) that is forbidden by the Documentation; or (B) that is not designated in the Documentation as available for interface with the Software, Support, Subscription, or the Services, unless such hardware or software is a host computer, operating system, or other type of hardware or software necessary for the Software, Support, Subscription, or the Services to perform a function listed in the Documentation.

7.6 SOLE RESPONSIBILITY. MEDICAL PRACTICE AGREES THAT THE SOLE AND EXCLUSIVE RESPONSIBILITY FOR ANY MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO A PATIENT’S MEDICAL CARE AND FOR DETERMINING THE ACCURACY, COMPLETENESS OR APPROPRIATENESS OF ANY MEDICAL PRACTICE DATA, INCLUDING, BUT NOT LIMITED TO ANY BILLING, CLINICAL, CODING, DIAGNOSTIC, MEDICAL OR OTHER INFORMATION PROVIDED BY THE SOFTWARE OR ANY OTHER EZDERM SERVICES, RESIDES SOLELY WITH THE PROVIDERS TREATING SUCH PATIENT. EZDERM DOES NOT ASSUME ANY RESPONSIBILITY FOR HOW SUCH INFORMATION IS USED. MEDICAL PRACTICE ACKNOWLEDGES AND AGREES THAT THE SOFTWARE OR ANY OTHER EZDERM SERVICES



DO NOT “RECOMMEND,” “SUGGEST,” OR “ADVISE” PROPER PRESCRIBING OR OTHER TREATMENT DECISIONS AND THAT THE RESPONSIBILITY FOR THE MEDICAL TREATMENT, AND ANY ASSOCIATED DECISIONS REGARDING BILLING FOR MEDICAL SERVICES, RESTS WITH THE PROVIDERS TREATING SUCH PATIENT AND REVOLVES AROUND SUCH PROVIDER’S JUDGMENT AND SUCH PROVIDER’S ANALYSIS OF THE PATIENT’S CONDITION.

8. INDEMNIFICATION.

8.1 **Indemnification by Medical Practice.** Medical Practice shall, at its sole cost and expense, indemnify, hold harmless, and, at EZDERM’s option, defend EZDERM and the EZDERM Affiliates, their respective officers, directors, members, managers, employees, attorneys, independent contractors, equity owners, affiliates, representatives and successors and assigns (collectively, “EZDERM Indemnitees”), from and against any liability, losses, damages, costs, and expenses (including reasonable attorney’s and accountant’s fees and costs and expenses reasonably incurred in investigating, preparing, defending against, or prosecuting any litigation or claim, action, suit, proceeding, or demand), incurred or awarded against the EZDERM Indemnitees in connection with or resulting from any and all claims, complaints, actions, legal proceedings, suits, arbitrations, or proceedings brought by any third parties, including but not limited to claims (“Claim”): (i) alleging that the Medical Practice Data, infringes or misappropriates the intellectual property rights of a third party or violates applicable law; (ii) alleging that Medical Practice’s or any Authorized User’s use of the Software in violation of this Agreement causes EZDERM to be in breach of any agreement relating to any third-party application or platform; (iii) based upon a breach by Medical Practice or Users of this Agreement; (iv) alleging infringement of any copyright, patent or other intellectual property right of a third party, arising out of the use of the Software by Medical Practice or any Authorized User in any manner prohibited by, in violation of, or not contemplated by this Agreement; (v) related to or arising out of a financial transaction brought by any third party based on the use of the Software; (vi) alleging negligence or misconduct; (vii) based upon the use of the Software or Subscription in a manner not authorized by this Agreement; or (viii) modifications to the Software or Subscription not made by EZDERM.

8.2 **Indemnification Procedures.** EZDERM shall notify Medical Practice in writing of any third party Claim for which EZDERM believes it is entitled to be indemnified pursuant to Section 8.1. EZDERM shall use commercially reasonable efforts to cooperate with Medical Practice at Medical Practice’s sole cost and expense. Medical Practice shall promptly assume control of the defense and investigation of such third party Claim and shall employ counsel of its choice that is acceptable to EZDERM to handle and defend the same, at Medical Practice’s sole cost and expense. EZDERM may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. Medical Practice shall not settle any third party Claim on any terms or in any manner that adversely affects the rights of any EZDERM Indemnitees without the EZDERM’s prior written consent. If Medical Practice fails or refuses to assume control of the defense of such third party Claim, EZDERM shall have the right, but no obligation, to defend against such third party Claim, including settling such third party Claim after giving notice to Medical Practice, in each case in such manner and on such terms as the EZDERM may deem appropriate. EZDERM’s failure to perform any obligations under this Section 8.2 will not relieve Medical Practice of its obligations under this Section 8, except to the extent that Medical Practice can demonstrate that it has been materially prejudiced as a result of such failure.

9. **LIMITATION OF LIABILITY.** EZDERM SHALL HAVE NO LIABILITY TO MEDICAL PRACTICE OR ANY OTHER PERSON FOR LOSSES CAUSED BY OR RESULTING FROM THE USE OF THE SOFTWARE, THE DOCUMENTATION, THE SERVICES, THE SUPPORT, OR ANY PRODUCTS, OR WITH RESPECT TO EZDERM’S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR (A) LOST PROFITS OR REVENUES; (B) ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES; (C) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (D) LOSS OF GOODWILL OR REPUTATION; (E) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (F) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE HOWEVER CAUSED, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY. IN NO EVENT WILL EZDERM’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF



CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE AMOUNT PAID TO EZDERM BY MEDICAL PRACTICE UNDER THIS AGREEMENT DURING THE PREVIOUS THREE (3) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATIONS PROVIDED HEREIN APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS. BOTH PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NONCONFORMITY BETWEEN THE PARTIES AS AUTHORIZED BY THE UNIFORM COMMERCIAL CODE AND OF OTHER APPLICABLE LAWS. THE FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES SET FORTH IN THIS AGREEMENT. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IN THE EVENT THE LIMITED WARRANTY PROVIDED IN SECTION 7 FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING SHALL NOT LIMIT MEDICAL PRACTICE'S PAYMENT OBLIGATIONS UNDER SECTION 4.

10. TERM AND TERMINATION.

10.1 **Term of Agreement.** Unless otherwise set forth in the Order Form or otherwise terminated earlier pursuant to this Agreement's express provisions, this Agreement will remain in effect for twenty four (24) months from the Effective Date (“**Initial Term**”) and shall automatically renew for successive twelve (12) month periods (“**Renewal Term**”) upon EZDERM’s prevailing terms and conditions unless either Party provides written notice of non-renewal to the other Party at least ninety (90) days prior to the expiration of the then-current term. The Initial Term and any Renewal Term shall be referred to herein as “**Term**”. If any Order Form under this Agreement remains active beyond the Term, this Agreement shall remain in place until the expiration of all such Order Form(s).

10.2 **Termination.** Either Party may terminate this Agreement (i) effective on written notice if the other Party materially breach this Agreement, including the Service Guidelines, and such breach (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach (except that breaching Party shall have ten (10) days from receipt of notice of the breach to cure a monetary default); or (ii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

10.3 **Medical Practice Data.** After fulfilling its obligations set forth in Section 2.7 related to providing Medical Practice with a copy of the Medical Practice Data upon termination of this Agreement, EZDERM will have no continuing obligation to provide access to any Medical Practice Data, unless explicitly requested by Medical Practice and agreed to by EZDERM, which continued access may be subject to any additional fees and terms required by EZDERM. Medical Practice acknowledges that EZDERM does not prorate monthly invoices.

10.4 **Effects of Termination.** Upon termination of this Agreement, access to the Services, Software, Support, Documentation, and Subscription will terminate, and Medical Practice will cease all use of the Services, Subscription, Support, and Software and destroy and certify destruction of all Documentation and other EZDERM Confidential Information. Upon any termination by either Party under Section 10, there will be no refund for any Fees paid hereunder, including but not limited to any prepaid Fees for the Subscription, Services, or Support and Medical Practice shall be obligated to pay all Fees owed through the effective date of any termination.

10.5 **Survival.** The following sections shall survive any termination or expiration of this Agreement: Section 1 (Definitions), Sections 2.2-2.6 (IP and Restrictions), Section 4 (Fees and Payment Terms), Section 5



(Proprietary Rights), Section 6 (Confidentiality), Section 7 (Warranties and Disclaimers), Section 8 (Indemnification), Section 9 (Limitation of Liability), Section 10.3 (Medical Practice Data), Section 10.4 (Effect of Termination), Section 10.5 (Surviving Provisions), Section 11 (Miscellaneous), and any provisions of the Agreement, which by their express terms or clear intent survive termination or expiration of this Agreement.

11. MISCELLANEOUS.

- 11.1 **Notices.** Except as otherwise provided herein, any notice required or permitted to be given hereunder shall be hand delivered; sent by prepaid certified mail, return receipt requested; sent by reputable overnight courier such as Federal Express; or sent by e-mail or other form of electronic communication, and shall be deemed to have been given when hand delivered, three (3) business days after deposit in the U.S. mail, one (1) business day after timely deposit with an overnight courier, or upon receipt if sent by e-mail or other form of electronic communication, as the case may be. All notices shall be sent or delivered to the respective address specified below, except that either Party, upon notice to the other Party as provided for herein, may change the address to which further notices shall be sent to the addresses for the respective Parties set forth on the Order Form.
- 11.2 **Assignment.** Medical Practice shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without EZDERM's prior written consent, which consent EZDERM shall be at its sole and reasonable discretion. No assignment or other transfer will relieve Medical Practice of any of its obligations or performance under this Agreement. A change in control of Medical Practice, or a merger of Medical Practice with another, shall constitute an assignment requiring EZDERM's consent. In the event EZDERM consents to an assignment under Section 11.2, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 11.3 **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. There are no third-party beneficiaries to this Agreement.
- 11.4 **Modifications and Amendments.** This Agreement, including any Order Form(s) attached hereto and incorporated herein, may only be amended by writing executed by the Parties hereto. Notwithstanding the aforementioned requirement, the Parties agree that the Order Form(s) or SOW(s) attached hereto can be amended by e-mail transmission and acknowledgment by both parties of requests for amendments for the limited purposes of adding or removing the optional features or Authorized Users. Notwithstanding anything to the contrary contained herein, EZDERM reserves the right, in its sole discretion to make any changes to the Agreement, Documentation, Service, Subscription, Software, Support, or other associated services that it deems necessary or useful, including but not limited to, for the following: (a) to maintain or enhance: (i) the quality or delivery of the Services, Subscription Software, or Support to its customers, (ii) the competitive strength of or market for the Software, Support, or Services, or (iii) the Software, Support, or Services cost efficiency or performance; or (b) to comply with applicable laws or regulations. Notwithstanding anything to the contrary contained herein, EZDERM may modify or amend this Agreement at any time and will post access to details of any modifications or amendments to this Agreement on <https://ezderm.com/terms-conditions/>. Changes will not apply retroactively and generally will become effective thirty (30) days after they are posted. However, changes addressing new functions for a product or service or made for legal reasons will be effective immediately. If you don't agree to any modified or amended terms in the Agreement, you must stop using the Services, Software, Support, and Subscription. Your continued use of the Services, Software, Support, or Subscription after the effective date of any changes constitutes your agreement to follow and be bound by such changes.
- 11.5 **Waiver.** No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party waiving its rights. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other



or further exercise thereof or the exercise of any other right, remedy, power or privilege. Any failure or delay to demand strict performance of one (1) or more of the terms, covenants, or conditions set forth herein shall not be construed as a continuing waiver or relinquishment thereof and any Party may at any time demand strict and complete performance of said terms, covenants, and conditions, and such failure or delay will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action.

- 11.6 **Force Majeure.** EZDERM shall have no liability to Medical Practice if EZDERM is prevented from or delayed in performing its obligations under this Agreement by acts, events, omissions or accidents beyond its reasonable control, including but not limited to, strikes, lockouts, or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, fire, flood, or storm.
- 11.7 **No Partnership/Agency.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorize either Party to act as agent for the other.
- 11.8 **Governing Law.** This Agreement is governed by and construed in accordance with the laws of the State of Florida without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Florida. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Florida having jurisdiction over Naples, Florida. The Parties hereto consent to exclusive jurisdiction and venue of such courts for the purpose of any action or proceeding brought by either of them which relates to or is in connection with this Agreement. Each Party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 11.9 **Entire Agreement.** This Agreement, along with the EZDERM Billing Services Agreement, if applicable, and the Business Associate Agreement, and any attachments, constitute the whole agreement between the Parties and supersedes any previous arrangement, understanding, or agreement between them relating to the subject matter of this Agreement. To the extent there is any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum, or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Medical Practice purchase order or in any other Medical Practice order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- 11.10 **Export Compliance.** The Parties acknowledge that the Software, and other products and information provided under this Agreement are subject to United States export laws and regulations and that any use or transfer of any such thing must be authorized under those laws and regulations. Medical Practice agrees that it will not distribute, transfer, or transmit products or information provided under this Agreement to any other person in violation of U.S. export regulations. If requested by EZDERM, Medical Practice agrees to execute written assurances and other export-related documents as may be required by EZDERM to comply with U.S. export regulations. Each Party shall comply with the export laws and regulations of the U.S. and other applicable jurisdictions in providing and using the Software. Without limiting the foregoing, (i) each of EZDERM and Medical Practice represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Medical Practice shall not permit Users to access or use the Software in violation of any U.S. export embargo, prohibition, or restriction.
- 11.11 **Counterparts; Electronic Execution of Agreement.** This Agreement, any Order Form, and any SOW may be executed in counterparts (including .pdf signatures and electronic signatures), each of which shall be deemed to be an original. This Agreement, any Order Form, and any SOW may also be entered into by electronic means. Medical Practice may communicate its acceptance of this Agreement, any Order Form, and any SOW by any electronic means which indicates to EZDERM that Medical Practice desires to enter into this Agreement, any Order Form, any SOW, and/or obtain the Subscription, Services and/or Support,



including, but not limited to, by (i) email; (ii) clicking on an agreement or consent button, box, or icon on the EZDERM Website designed to solicit acceptance of this Agreement; or (iii) completing an electronic Order Form or SOW on the EZDERM Website or received via email and submitting it to EZDERM. EZDERM may likewise indicate its consent to this Agreement, any Order Form, and any SOW and may also indicate its consent to this Agreement, any Order Form, and any SOW by providing access to the Subscription, Services, Software and/or Support to Medical Practice following acceptance of this Agreement, any Order Form, and any SOW by Medical Practice.

- 11.12 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 11.13 **Titles.** The section headings used in this Agreement are for convenience of reference only and shall not affect the meaning of the terms and provisions of this Agreement.
- 11.14 **Construction.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No presumptions or rules of interpretation based upon the identity of the Party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.
- 11.15 **Interpretation of Certain Terms.** Any words herein used in the singular shall denote the plural as the context so requires and, when used herein in the plural, shall denote the singular as the context so requires. Pronouns used herein, whether masculine, feminine, or neuter, shall be interpreted as the context so requires. The word “including” shall mean “including without limitation.” Any reference to any federal, state, or local law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.
- 11.16 **Insurance.** Medical Practice, at its sole cost and expense, shall purchase and carry appropriate levels of insurance coverage that are prudent and customary in the businesses in which Medical Practice is engaged and maintain it in full force and effect during the term of this Agreement for the benefit of both Medical Practice and EZDERM. Such policies may not be canceled without providing EZDERM with at least thirty (30) days’ prior notice of cancellation.
- 11.17 **Non-Solicitation.** Medical Practice shall not solicit for employment or hire any EZDERM personnel, directors, officers, employees, or contractors, who has been directly involved in the development, sale, installation, or support of the Software for a period of the later of twelve (12) months from the termination of such individual’s employment or agreement at EZDERM.
- 11.18 **Attorneys’ Fees.** Medical Practice shall be responsible for EZDERM’s reasonable attorneys’ fees associated with the enforcement of the terms of this Agreement or the collection of any amounts due under this Agreement.



ATTACHMENT A

The Software may contain certain “**Editorial Content**” provided under license from the American Medical Association (“**AMA**”). “**Editorial Content**” means content from the print publication Current Procedural Terminology, Fourth Edition (“**CPT Book**”) and the data file(s) of Current Procedural Terminology (“**CPT®**”) including CPT® Standard, CPT® Enhanced and Developer’s Toolkit, all as available from the AMA (individually and collectively called “**CPT Data File**”) published by the AMA in the English language as used in the United States (collectively, “**CPT**”), a coding work of nomenclature and codes for reporting of healthcare services, together with (a) content from the data file published by the AMA of the International Classification of Diseases 9th Revision Clinical Modification Volume 1 (“**AMA’s Version of ICD-9-CM**”); (b) content from the data file published by the AMA of the International Classification of Diseases 10th Revision Clinical Modification and Procedure Coding System (“**AMA’s Version of ICD 10-CM/PCS**”); and (c) content from the data file published by the AMA of the Healthcare Common Procedure Coding System Level II (“**AMA’s Version of HCPCS**”).

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Per SURESCRIPTS, LLC electronic prescribing (eRx) rules and regulations regarding Identity Proofing (IDP), EZDERM is required to adopt IDP requirements that meet or exceed a National Institute of Standards and Technology (NIST) Assurance Level 2. As such, EZDERM requires that The Medical Practice identify an employed physician representative to undergo the IDP process on behalf of The Medical Practice. Upon completion of the IDP process, this verified Authorized User will serve in a system administrator role.

The Medical Practice warrants, in writing, that all individuals, other than the verified physician representative, for which it requests eRx functionality have been successfully identity proofed to meet or exceed a National Institute of Standards and Technology (NIST) Assurance Level 2, or equivalent thereto.