

Elation Service Agreement

Last updated: October 27, 2017

This Elation Service Agreement ("Agreement") is entered into by and between Elation Health, Inc. ("Elation"), a Delaware corporation, and the entity or individual agreeing to these terms ("Customer"), each, a "Party" and collectively, the "Parties", effective as of the date Customer presses "I Agree" (the "Effective Date").

WHEREAS, Elation has developed its proprietary web-based electronic medical records (EMR) and patient collaboration platform (currently named 'Elation Passport') which it makes available to medical practitioners and Patients as a service (the "Service") through the web site currently located at www.elationhealth.com, www.elationpassport.com or related Elation web sites, sub-sites or applications (collectively, the "Site"); and

WHEREAS, Customer wishes to obtain a non-exclusive license to use the Service, and Elation is willing to grant such non-exclusive license to Customer on the terms set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, the Parties hereto agree as follows:

1. Service

1.1 License to Use the Service

Subject to the terms and conditions of this Agreement, including, without limitation, Customer's payment obligations, Elation hereby grants Customer a limited, personal, non-transferable, non-sublicensable and non-exclusive license to use the Service to access, store and manage Customer Content (as defined in Section 3.1 (Customer Content)) and interact with patients ("Patients") and third

party medical professionals, in each case solely for Customer's internal business purposes. Use of the Services on Customer's behalf is only permitted by an employee or agent of Customer who has been designated by Customer and who has registered with Elation to open an Account in connection with such person's use the Service on Customer's behalf (each, an "Authorized User"), as specified in Section 2.1 (Accounts). "Authorized Users" include physicians, physician assistants, nurse practitioners, non-physician staff members and on-call/covering physicians retained by Customer. Patients are not Authorized Users for purposes of this Agreement; in order to use the Service, Patients are required to register separately with Elation as specified in Section 1.4.3 (Interactions with Patients). This license is for the sole purpose of enabling Customer (and its Authorized Users) to use the Service as provided by Elation, in the manner permitted by this Agreement and any applicable documentation.

1.2 Use of Apps

In addition to accessing the Service through the Site, Elation may permit Authorized Users to access the Service on certain computers and mobile devices by downloading and installing an app (each, an "App") which includes Elation's proprietary software. Certain Apps may be made available by Elation directly to Authorized Users and others Apps may only be made available for download through third party app stores. As a condition of using an App, each Authorized User will be required to agree to the terms and conditions of Elation's applicable App authorized user terms of use agreement ("EULA"). Customer is responsible for ensuring that all Authorized Users comply with the terms of the applicable EULA. Elation will not require any Authorized User to make any payment for downloading or using the App. The EULA is not intended to affect the terms of this Agreement as between Elation and Customer; in the event of any conflict between the EULA and the terms of this Agreement, the terms of this Agreement shall prevail as between the Parties.

1.3 Technical Requirements

Customer is responsible at its own cost and expense for procuring any necessary third party components or services required to use the Service as specified on the Site. For example, the Service will only operate with specified browsers and requires a high-speed Internet connection. Elation disclaims all liability arising from any Service performance-related issues or other negative effects, losses or

damages to the extent caused by: (a) any failure by Customer to operate the Service in accordance with the technical requirements; or (b) any other products, services, or technology used by Customer in connection with the Service.

1.4 Additional Service Terms

1.4.1 Pre-Population.

Elation will assist Customer to upload Customer Content such as Patients' personal demographic information and a portion of each Patient's prescription history and laboratory data which will be stored and accessible through the Service. The Parties shall mutually agree upon the scope of such pre-population.

1.4.2 Interactions with Medical Professionals.

Certain features of the Service permit Customer to interact directly with third party medical professionals and other third parties (including Patients as specified below). Customer will be solely responsible and liable for all its communications with third parties through the Service. Elation does not screen or control the content of user communications, and does not guarantee the accuracy, integrity, quality or suitability of such communications. Customer's use of such communication features is solely at its own risk and Elation has no responsibility or liability in connection therewith. The foregoing terms also apply to communications and other interactions with Patients as further described below.

1.4.3 Interactions with Patients.

Certain features of the Service permit (or may in the future permit) Customer to interact directly with Patients (e.g., to schedule appointments, discuss medical treatment and send medication prescription-related messages) and to make portions (as determined by Customer) of Customer's medical record for a Patient, including, any clinical profile derived from such record (each, a "Record") available to that Patient. Customer retains sole discretion as to whether it wishes to use such interactive features with any or all Patients. In order for Customer to use such features, Customer must send an invite to the Patient using the 'Invite Patient' feature in the Service. The Patient will then be required to open an Elation Passport account on the Site by registering directly with Elation. As part of the

registration process, Patients will be required to agree to Elation's then-current Elation Passport Patient Terms of Service or equivalent terms; such terms are solely between Elation and each Patient and govern Patient's use of the Service. Customer acknowledges that the Elation Passport Patient Terms of Service permit the Patient: (a) to access their Record; and (b) if and when such feature is enabled by Elation, to make all or a portion of that Record available to third parties through the Service.

1.5 Third Party Service Features

Certain features of the Service (collectively, the "Third Party Service Features") permit Customer to access and use services and content which are provided by third party suppliers who have contracted with Elation to permit such use. All references to "Service" in this Agreement include the Third Party Service Features except as otherwise expressly set forth in this Agreement.

1.5.1 General

Elation has been granted the right by its third party suppliers to enable Customer to access the Third Party Service Features; however, Customer acknowledges that Elation may be required to suspend and/or terminate use of a Third Party Service Feature at any time, to the extent required by the applicable third party supplier for any reason. Customer's use of certain Third Party Service Features may be subject to the third party supplier's terms and conditions; any such terms will be provided to Customer when it accesses the relevant Third Party Service Feature for the first time. Such terms are solely between Customer and the third party supplier; Elation has no control over such terms and they do not affect the terms of this Agreement as between the Parties. Elation uses its good faith efforts to work with reputable third party suppliers; however, Elation does not monitor, review, edit or otherwise control content or other information provided through the Third Party Service Features and Customer uses such information solely at its own risk and Elation expressly disclaims any liability arising from Customer's use of or reliance on such information or otherwise arising from any act or omission of Elation's third party suppliers.

1.5.2 Laboratory Test Results

Customer may use the Third Party Service Features to retrieve electronic laboratory results from certain participating laboratories and in the future, Elation may permit Customers to place orders for tests with such laboratories. The list of current participating laboratories is subject to change. In order to use this feature, Customer is required to provide the required authorizations to the participating laboratories to enable Elation to obtain results (and if permitted, place orders for tests) on Customer's behalf.

1.5.3 Medical Reference Content

Elation may make medical reference content available to Customer through the Third Party Service Features (e.g., descriptions of drug-to-drug interactions and drug allergy information).

1.5.4 Drug Prescription Information.

Customer may use the Third Party Service Features in connection with Patient prescriptions (e.g, routing prescriptions to certain participating pharmacies; determining drug insurance eligibility; obtaining drug formulary information; and obtaining prescription history).

1.6 Professional Responsibility

Customer acknowledges that the professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care services. As between the Parties, Customer takes full responsibility for the use of all information provided through the Service in providing patient care. Clinical information, if any, provided through the Service is intended as a supplement to, and not a substitute for, the knowledge, expertise and judgment of professional personnel. Elation and its suppliers disclaim all liability for the use of any information or results provided by, or obtained through, the Service and used by professional personnel. Elation and its suppliers are not liable for actions of Customer (including its Authorized Users) which may result in any liability due to malpractice or failure to warn. Elation and its suppliers provide no medical or other professional advice in connection with this Agreement, the Service and the information contained therein. The Parties acknowledge that a licensed professional is responsible for independently reaching any medical or other

professional judgment, and for any resulting diagnosis and treatments, notwithstanding any use of the Service by such professional. The absence of a warning for a given drug or drug combination should not be construed to indicate that the drug or drug combination is safe, appropriate, or effective in any given patient.

1.7 Prohibitions

Customer shall not, and shall not permit or induce any Authorized User or any third party, to: (a) disable or circumvent any security measures used by the Service, Site or App or otherwise attempt to gain unauthorized access to any portion or feature of the Service, Site or App or any other systems or networks connected to the Service, Site or App; (b) use any "deep-link", "page-scrape", "robot", "spider" or other automatic device, program, algorithm or methodology, or any comparable manual process, to access, acquire, copy, or monitor any portion of the Service, Site or App; (c) interrupt or interfere with the proper operation of the Service, Site or App; (d) use the Service, Site or App in a manner prohibited by this Agreement or applicable laws, rules or regulations; (e) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of any proprietary software used to provide, maintain, or otherwise applicable to, the Service, Site or App; (f) access or use the Service, Site or App for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes, or publicly disseminate information regarding their performance; (g) rent, lease, copy, provide access to, demonstrate, or sublicense the Service, Site or App to a third party; (h) use the Service, Site or App to provide, or incorporate the Service, Site or App (or a portion thereof) into any product or service provided to a third party; (i) remove or obscure any proprietary or other notices contained in any Elation Technology (as defined in Section 6.1 (Reservation of Rights)), including any reports or data printed from the Service; or (j) make any representations, warranties or other commitments on Elation's behalf, whether to Authorized Users or any third party (including, without limitation, Patients) concerning the Service, Site or App or their content, functionality, performance, security or other features. Customer will promptly notify Elation if Customer becomes aware or reasonably suspects that the Service or any other Elation Technology is being used for any illegal or unauthorized purpose, including, without limitation, where such use is being conducted by an Authorized User.

2. Elation Accounts & Privacy

2.1 Accounts

In order to use the Service on Customer's behalf, each Authorized User is required to register with Elation to open an Elation account ("Account") in such Authorized User's own name. Customer will from time-to-time provide Elation with the names, e-mail addresses and professional credentialing information of each Authorized User who is authorized to use the Service on Customer's behalf. Customer shall also specify the permissions applicable to each Authorized User based on the choices offered by Elation at that time (e.g., read-only, or editor permissions). Following receipt of such names, Elation will contact each prospective Authorized User via email and will provide instructions for the process that each person must follow to register with Elation in order to use the Service on Customer's behalf. Elation will not require any Authorized User to make any payment for using the Service; Customer is solely responsible for all payments arising from Authorized Users' use of the Service. As part of the Account registration procedure, each Authorized User will be required to agree to the Elation Authorized User Terms of Use available on the Site. Such Elation Authorized User Terms of Use are not intended to affect the terms of this Agreement as between Elation and Customer; in the event of any conflict between the Elation Authorized User Terms of Use and the terms of this Agreement, the terms of this Agreement shall prevail as between the Parties. Without limiting any other remedies available to Elation under this Agreement or at law, Elation may suspend or terminate any Authorized User's access to and use of the Service if such user breaches or is suspected of breaching the Elation Authorized User Terms of Use. Customer will not be entitled to a refund of: (a) any fees paid (or payable) to Elation for such Authorized User during the period of any suspension; or (b) any refund of any prepaid fees if such Authorized User's access to and use of the Service is terminated. Elation will notify Customer if any Authorized User's access to and use of the Service has been suspended or terminated and the reasons therefore.

2.2 Responsibility

Customer shall be responsible for any and all actions taken using Authorized Users' accounts and any applicable user IDs, passwords or other authentication credentials provided by Elation. Customer shall immediately notify Elation: (a) if

any Authorized User who has access to a user ID, password or other authentication credentials, is no longer permitted to access and use the Service on behalf of Customer; or (b) if Customer becomes aware of, or reasonably suspects, any unauthorized use of an Authorized User's Account. An Authorized User is strictly prohibited from using any other Authorized User's Account (including, such other user's user name or password) at any time and for any reason. As between Elation and Customer, Customer is solely responsible and liable for any and all acts and omissions by any Authorized User in connection with their use of the Service.

2.3 Privacy

To the extent any Authorized User is required to provide their own personally identifiable information to Elation in connection with their use of the Service (e.g., their first and last name, telephone number, or e-mail address), Elation will only use such personally identifiable information in accordance with the terms of Elation's privacy policy (the "Privacy Policy") available on the Site.

2.4 Publicity

Customer agrees that Elation shall have the right, but not the obligation, to include Customer's name and logo on the Site and in other marketing materials promoting the Service and, subject to Elation's confidentiality obligations under this Agreement, to refer to Customer's use of the Service in published reports, white papers or other studies that describe the benefits of using the Service.

2.5 Use of Aggregate Information

Elation may use usage patterns, trends and other statistical data derived from Customer's use of the Service for purposes of providing, operating, maintaining, or improving the Service and for Elation's advertising and marketing purposes; provided however, that all such information will be aggregated and/or anonymized and will not identify Customer or its Authorized Users or Patients or disclose any Customer Content or other Customer Confidential Information.

3. Customer Content

3.1 Customer Content

Customer is solely responsible for any and all information, data, files, written text, notes, photographs, scans, videos, images, and other content (collectively "Customer Content") that Customer or any Authorized User accesses, uploads, stores, transmits, displays, or otherwise uses in connection with the Service, and for the consequences of Customer's (including any Authorized User's) actions in connection with such Customer Content. "Customer Content" includes Records. Subject to Elation's compliance with its obligations under this Agreement, Customer acknowledges and agrees that Elation has no control over Customer Content and is not responsible or liable to Customer or any third party (including, without limitation, Patients) in connection with such Customer Content.

3.2 License to Use Customer Content

By uploading, storing, transmitting, displaying, or otherwise using Customer Content in connection with the Service, and by permitting any Authorized User to conduct such activities, Customer hereby grants Elation a worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable license to reproduce, adapt, reformat, store, display, distribute, modify, create derivative works of, and otherwise use such Customer Content to the extent necessary for Elation to provide the Service to Customer. Subject to the foregoing limited license, Customer, retains sole ownership and control over Customer's right, title and interest in Customer Content. Customer represents and warrants that it has sufficient rights in the Customer Content to grant the foregoing license.

3.3 Customer Warranties

Customer represents and warrants that Customer will not (and Customer will not permit or induce any Authorized User to) store or otherwise use any Customer Content in connection with the Service that: (a) is defamatory, libelous, abusive or obscene; (b) constitutes or encourages conduct that is considered a criminal offense or gives rise to civil liability, or otherwise violates any applicable law, rule or regulation; (c) has been obtained in violation of Customer's privacy policy or equivalent terms in effect when the information was obtained by Customer from a Patient; (d) breaches the intellectual property, privacy or publicity rights of any person or entity; or (e) is known to contain a virus, malicious code or any other harmful component.

3.4 Templates

To the extent an Authorized User creates generic content profiles or other content templates (e.g., descriptions of the symptoms or treatment of a particular medical condition) (collectively, "Templates") and uses the sharing feature in the Service to make such Templates available to other users of the Service, Customer hereby grants Elation a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, transferable, sublicensable license to use, copy, modify, create derivative works of, publicly display, publicly perform, distribute and otherwise exploit, without any attribution or compensation to Customer (including any Authorized User), any and all Templates in connection with the Service or any of Elation's other products or services; however, Customer has no right to compel any such use.

4. Fees

4.1 Fees

As consideration for the license to use the Service, Customer will pay Elation subscription fees and any other applicable fees. Fees are specified to Customer at the time at which this Agreement is entered into. Subscription fees are charged on a monthly or an annual service period based on the number of Provider Users detailed in the Sales Order or the active number of Provider Users, whichever is greater. "Provider Users" include Customer's Authorized Users consisting of physicians, physician assistants, nurse practitioners, and other healthcare providers permitted to sign off on visit notes and orders. Fees are based solely on Elation's measurements of Customer's use of the Service.

4.2 Payment Policy

The current and complete [Payment Policy](#) is available on the Site, and those payment terms available on the Site shall override the payment terms in this Agreement in the event of a conflict between the two sets of terms.

5. Service Availability, Support & Security

5.1 Availability

Elation will make the Service available to Customer consistent with the manner in which Elation makes the Service generally available to other Elation customers. Elation will use its good faith, commercially reasonable efforts to ensure that the Service is available for its intended use; however, Elation does not make any representations, warranties or guarantees regarding uptime or availability of the Service. For example, the Service may be unavailable during scheduled maintenance, or as a result of system failures, or service downtime caused by Elation's third party suppliers or force majeure events. Elation will use commercially reasonable efforts, circumstances permitting, to provide information regarding any Service interruptions and the restoration of the Service, including by information posted on the Site or sent to Customer's primary contact email address.

5.2 Service Suspensions

Unless otherwise prohibited by applicable law, Elation may temporarily suspend Customer's (or any Authorized User's) access to the Service or to certain features of the Service (e.g., the ability to update Customer Content), if Elation reasonably determines that: (a) there is a threat or attack on the Service (including a denial of service attack) or other event that may create a risk to the Service, Customer or any third party; (b) Customer (or any Authorized User) is using the Service in violation of this Agreement or any applicable law, rule or regulation; (c) Customer is in default of its payment obligations hereunder; or (d) if required by Elation's third party suppliers in connection with Customer's (or any Authorized User's) use of a Third Party Service Feature (collectively, "Service Suspensions"). During any Service Suspension, Elation will, if requested by Customer in writing, make Customer Content available to Customer in accordance with Section 7.3 (Copy of Customer Content). Elation will use commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Customer, (including, through notices sent to Customer's primary contact e-mail address), and to provide updates regarding any resumption of the Service following a Service Suspension. Elation will have no liability for any damages, liabilities, losses (including, without limitation, any loss of data or profits) or any other consequences that Customer may incur as a result of any Service Suspension.

5.3 Technical Support

During the term of this Agreement, Elation will provide technical support to Customer as is generally made available to other users of the Service, in accordance with Elation's technical support terms set forth on the Site (or otherwise notified to Customer), as such support terms may be updated by Elation from time-to-time. Elation will provide pre go-live training for Customer's Authorized Users as well as go-live and subsequent email and phone support.

5.4 Security

Elation will use commercially reasonable efforts to establish and maintain administrative, technical and physical safeguards in connection with the data center facilities, servers, networking equipment, and software systems that are within Elation's reasonable control, and that are used to provide the Service, that are designed to: (a) protect the security and integrity of the Elation network; (b) guard against anticipated threats or hazards to the security and integrity of the Elation network; and (c) protect against the accidental or unauthorized access, use, alteration or disclosure of Customer Content. The safeguards will be consistent with generally accepted security standards within the electronic medical records (EMR) industry.

5.5 Changes to Service

Customer acknowledges and agrees that the form and nature of the Service which Elation currently provides may change from time-to-time without prior notice to Customer; provided however, that except for changes to the Third Party Service Features, such changes will not materially reduce the functionality of the Service during any month or other period for which Customer has already paid fees to use the Service. Examples of changes to the form and nature of the Service include, without limitation, the introduction of security patches and the addition or removal of features or functionality.

6. Ownership

6.1 Reservation of Rights

This is a subscription agreement for use of the Service and not an agreement for sale. Customer acknowledges that: (a) it is obtaining only a limited right to use the

Service and that irrespective of any use of the words "purchase", "sale" or like terms hereunder, no ownership rights are being conveyed to Customer under this Agreement; and (b) the Service is offered as an online, hosted solution and Customer has no right to obtain a copy of the Elation Technology used to provide the Service. Customer agrees that Elation and/or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Service, Site, App, and all materials, content and information made available through the foregoing and any and all related and underlying technology, software, algorithms, formulae, processes, system architecture, database schemas, production methodology and documentation and any modifications or derivative works thereof (collectively, the "Elation Technology"). "Elation Technology" does not include Customer Content. Customer is not permitted to distribute, publicly display or perform, sell, modify or create derivative works of any third party content made available to Customer through the Service; all such content is provided solely for Customer's internal use. "Elation Health" and "Elation Passport" are trademarks of Elation in the United States of America. Other trademarks, names and logos on the Site or Service are the property of their respective owners. Nothing in this Agreement gives Customer any right to use any of Elation's or its suppliers' trade names, trademarks, service marks, logos, domain names, or other distinctive brand features. All rights not expressly granted by Elation under this Agreement are expressly reserved; there are no implied rights.

6.2 Feedback

If Customer (including any Authorized User) provides any comments, questions, recommendations, suggestions, or related information to Elation, by any means, concerning the Service (collectively, "Feedback"), Customer hereby grants Elation a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, transferable, sublicensable license to use, copy, modify, create derivative works of, publicly display, publicly perform, distribute and otherwise exploit, without any attribution or compensation to Customer (including any Authorized User), any and all Feedback in connection with the Service or any of Elation's other products or services; however, Customer has no right to compel any such use.

7. Term and Termination

7.1 Term and Termination

The term of this Agreement will begin on the Effective Date and will continue until this Agreement is terminated by either Party for any or no reason, by providing not less than thirty (30) calendar days' prior written notice of termination in advance of the end of the relevant Service Period to the other Party. However, Elation reserves the right to terminate this Agreement immediately upon written notice to Customer, (or without written notice to Customer if such notice is legally prohibited), if Elation is required to do so under any applicable law, rule or regulation, in which case Customer will be refunded any prepaid fees for the Service to the extent such Service has not been provided.

7.2 Effects of Termination

Upon termination of this Agreement: (a) Customer shall promptly pay any and all outstanding fees which have accrued as of such termination; (b) Customer will have no further right to use the Service and Customer must destroy all copies of the Elation Technology and any other Elation Confidential Information in Customer's possession; provided however, that Customer may retain and use internally, copies of Customer Content obtained by Customer from the Service which Customer printed in hardcopy form prior to termination; (c) if this Agreement is terminated by Elation as a result of Customer's breach of this Agreement (which includes, without limitation, an Authorized User's breach of this Agreement or any other terms applicable to such user's use of the Service), Customer will not be entitled to a refund of any fees that Customer prepaid to Elation prior to such termination; and (d) except as otherwise expressly stated in this Agreement, termination of this Agreement is not an exclusive remedy and the exercise by either Party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, at law or otherwise.

7.3 Copy of Customer Content

If requested by Customer within sixty (60) calendar days of the date of termination of this Agreement (or following a Service Suspension if requested by Customer in writing, or as otherwise required by applicable law), Elation shall provide Customer (at no additional cost to Customer except to the extent applicable law allows Elation to charge any reasonable, actually incurred copying,

transmission or similar costs) with an electronic copy of the Customer Content in a format determined by Elation. Except as specified in the previous sentence, Customer acknowledges that following termination of this Agreement it shall have no further access to any Customer Content input into the Service, and Elation may delete all Customer Content that has been stored by Elation pursuant to this Agreement. Notwithstanding any other term in this Agreement to the contrary, Elation shall be entitled to retain and use copies of Records both during and after the termination of this Agreement to the extent a Patient has granted Elation permission under the Elation Passport Patient Terms of Service to make such Records available to Patient and Patient's designees.

7.4 Survival

All terms of this Agreement which are by their nature intended to survive, will survive the termination of this Agreement.

8. Warranties

8.1 Mutual Representations and Warranties

Each Party hereby represents and warrants that: (a) this Agreement has been duly and validly executed and delivered by such Party and constitutes a legal and binding obligation enforceable against such Party in accordance with its terms; (b) such Party has all necessary power and authority to execute and perform in accordance with this Agreement; and (c) such Party's execution, delivery and performance of this Agreement will not conflict with or violate any agreement or other obligation applicable to such Party or binding upon its assets.

8.2 Additional Elation Warranty

Elation warrants, for Customer's benefit only, that the Service (excluding the Third Party Service Features) will for a period of ninety (90) calendar days from the Effective Date (the "Warranty Period"), operate in substantial conformity with the applicable descriptions on the Site. Elation's entire liability (and Customer's sole and exclusive remedy) for any breach of the foregoing warranty shall be, in Elation's sole discretion and at no charge to Customer, to use commercially reasonable efforts to provide Customer with an error correction or work-around

that corrects the reported non-conformity, or if Elation determines such remedies to be impracticable, to allow Customer to terminate this Agreement and receive as its sole and exclusive remedy, a refund of: (a) the portion of the applicable Service subscription fees which are allocable to the thirty (30) day period prior to the date the warranty claim was made; and (b) any fees Customer has prepaid for use of the Service it has not received as of the date of the warranty claim. The limited warranty set forth in this Section 8.2 shall not apply: (i) unless Customer makes a claim within the Warranty Period; (ii) if the warranty issue was caused by misuse, unauthorized modifications or third party hardware, software or services or by some other act or omission outside Elation's control; (iii) if the warranty issue is caused by Customer's failure to comply with any technical requirements specified on the Site or otherwise provided to Customer; or (iv) to use of the Service provided on a no-charge or evaluation basis.

8.3 Disclaimer of Warranties

EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTIONS 8.1 (MUTUAL REPRESENTATIONS AND WARRANTIES) AND 8.2 (ADDITIONAL ELATION WARRANTY), ELATION AND ITS SUPPLIERS: (A) EXPRESSLY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) DO NOT REPRESENT OR WARRANT THAT THE SERVICE OR OTHER ELATION TECHNOLOGY WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THEIR OPERATION WILL BE TIMELY, UNINTERRUPTED, SECURE, OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED; AND (C) DO NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF, USE OF THE SERVICE OR OTHER ELATION TECHNOLOGY IN TERMS OF THEIR ACCURACY, QUALITY, RELIABILITY, CORRECTNESS, TIMELINESS, COMPLETENESS, AVAILABILITY OR OTHERWISE. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR CUSTOMER'S USE OF THE SERVICE AND OTHER ELATION TECHNOLOGY. CUSTOMER ACKNOWLEDGES THAT ALL SECURITY SOLUTIONS HAVE INHERENT LIMITATIONS AND THAT ELATION AND ITS SUPPLIERS WILL NOT BE LIABLE FOR ANY FAILURE OF SECURITY OR ENCRYPTION MEASURES OR FOR ANY UNAUTHORIZED INTERCEPTION, ACCESS, RECEIPT OR USE OF ANY CUSTOMER CONTENT. ELATION SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, DATA LOSS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE

INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF ELATION.

8.4 Additional Drug Prescription Information Disclaimer

THE THIRD PARTY SUPPLIER PROVIDING THE DRUG PRESCRIPTION INFORMATION THROUGH THE FEATURE SPECIFIED IN SECTION 1.5.4 (DRUG PRESCRIPTION INFORMATION) ABOVE, USES AVAILABLE TECHNOLOGY TO MATCH PATIENT IDENTITIES IN ORDER TO PROVIDE PHYSICIANS WITH PATIENTS' PRESCRIPTION DRUG BENEFIT INFORMATION AND PRESCRIPTION DRUG RECORDS IN ORDER TO PROVIDE PRESCRIBERS WITH PATIENTS' PRESCRIPTION BENEFIT AND PRESCRIPTION HISTORY INFORMATION. BECAUSE PATIENT INFORMATION IS MAINTAINED IN MULTIPLE PLACES, NOT ALL OF WHICH ARE ACCESSIBLE TO SUCH THIRD PARTY SUPPLIER, AND BECAUSE NOT ALL PATIENT INFORMATION IS KEPT IN A STANDARD FASHION OR IS REGULARLY UPDATED, IT IS POSSIBLE THAT FALSE MATCHES MAY OCCUR OR THAT THERE MAY BE ERRORS OR OMISSIONS IN THE PRESCRIPTION BENEFIT AND/OR PRESCRIPTION HISTORY INFORMATION. THEREFORE, ANY TREATING PHYSICIAN OR OTHER HEALTHCARE PROVIDER OR FACILITY SHOULD REVERIFY PRESCRIPTION BENEFIT OR PRESCRIPTION HISTORY INFORMATION WITH EACH PATIENT AND/OR THE PATIENT'S REPRESENTATIVES BEFORE SUCH INFORMATION IS RELIED UPON OR UTILIZED IN DIAGNOSING OR TREATING THE PATIENT. ELATION AND ITS THIRD PARTY SUPPLIERS ARE NOT A HEALTH PLAN, HEALTH CARE PROVIDER OR PRESCRIBER AND DO NOT AND CANNOT INDEPENDENTLY VERIFY OR REVIEW THE INFORMATION TRANSMITTED THROUGH THIS FEATURE OR THE SERVICE FOR ACCURACY OR COMPLETENESS AND NO REPRESENTATIONS ARE MADE REGARDING THE USE OF ANY PARTICULAR DATA SOURCE; SUCH DATA SOURCES MAY BE CHANGED AT ANY TIME WITHOUT NOTICE TO CUSTOMER.

8.5 Prohibited Exclusions

Nothing in this Section 8 (Warranties), Section 9 (Limitation of Liability) or any other provision of this Agreement is intended to exclude or limit Customer's statutory rights. However, to the fullest extent permitted by applicable law, Elation's warranties and liability will be limited as set forth in this Agreement.

9. Limitation of Liability

9.1 Disclaimer of Liability

ELATION AND ITS SUPPLIERS WILL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, PROFITS OR GOODWILL; LOSS OR INACCURACY OF DATA OR CONTENT; FAILURE OF SECURITY MECHANISMS; BUSINESS INTERRUPTION; COST OF DELAY; OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, REGARDLESS OF THE CAUSE OF ACTION, WHETHER BASED IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 Limitation of Liability

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ELATION'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO CUSTOMER OR ANY THIRD PARTY SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO ELATION UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO ELATION'S OR ITS SUPPLIERS' LIABILITY.

9.3 Survival

The Parties agree that the limitations of liability specified in this Section 9 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

10. Indemnification

10.1 Indemnification by Elation

Elation hereby agrees to defend, indemnify and hold harmless Customer and its officers, directors, employees and agents from and against any claim of

infringement of a U.S. trade secret right, U.S. copyright or U.S. trademark, in each case existing as of the Effective Date, asserted against Customer by a third party to the extent based upon Customer's use of the Service (excluding the Third Party Service Features) in accordance with the terms of this Agreement. If Customer's use of the Service or any feature of the Service, is in Elation's opinion likely to be enjoined due to the type of infringement specified above, or if required by settlement, Elation may, in its sole discretion: (a) substitute a substantially functionally similar service or feature; (b) procure for Customer the right to continue using the affected feature; or if (a) and (b) are in Elation's opinion commercially impractical; (c) terminate the license to use the Service or affected feature, or if deemed necessary by Elation, terminate this Agreement, and refund to Customer any prepaid fees for any portion of the subscription term for which Customer has not received the Service. The foregoing indemnification obligation of Elation shall not apply to the extent: (i) the Service is modified by any party other than Elation; (ii) of any unauthorized use of the Service; (iii) of any action arising as a result of Customer Content or any third party products or services used by Customer in connection with the Service; or (iv) otherwise arising as a result of any act or omission of Customer (including its Authorized Users). THIS SECTION 10.1 SETS FORTH ELATION'S AND ITS SUPPLIERS' ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

10.2 Indemnification by Customer

Customer hereby agrees to defend, indemnify and hold harmless each of Elation and its suppliers and their respective officers, directors, employees and agents from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) incurred by the indemnified Elation parties to the extent arising from: (a) Customer's (including its Authorized Users') interactions with Patients, laboratories, pharmacies, medical professionals and other third parties through the Service; (b) the acts and/or omissions of Customer (including its Authorized Users); and (c) Customer Content.

10.3 Indemnification Procedures

Each Party's foregoing indemnification obligations are conditioned on the indemnifying Party receiving from the indemnified Party: (a) prompt written notice

of the claim (but in any event notice in sufficient time for the indemnifying Party to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense, or settlement of such claim; provided however, that the indemnified Party may participate in such proceedings at its own cost and expense; and (c) all reasonably necessary cooperation of the indemnified Party (at the indemnifying Party's expense). The indemnifying Party shall not enter into any settlement without the indemnified Party's prior consent if the settlement requires the indemnified Party to admit any liability or make any payment which is not promptly reimbursed by the indemnifying Party.

11. Confidential Information

11.1 Definition of Confidential Information

"Confidential Information" means the terms and conditions of this Agreement and all other non-public information provided by either Party (the "Discloser") to the other Party (the "Recipient") pursuant to this Agreement, whether disclosed before, on or after the Effective Date, and whether disclosed in writing, verbally, or electronically, that Discloser designates in writing, or classifies orally, as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential. "Confidential Information" includes, without limitation, information relating to current, future and proposed products and services, information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, Patient information, business forecasts, sales information, marketing plans and business plans, or information received from third parties (including without limitation a Party's clients, suppliers, or principals). Customer Content constitutes Customer's Confidential Information. The Elation Technology and the terms and conditions of this Agreement constitute Elation's Confidential Information.

11.2 Non-Disclosure and Non-Use Obligations

Except as expressly permitted in this Section 11, Recipient will not: (a) use any of Discloser's Confidential Information; or (b) disseminate or in any way disclose Discloser's Confidential Information to any third party. Recipient may use the Confidential Information of Discloser solely to perform its obligations and exercise

its rights under this Agreement. Recipient will treat all Confidential Information of Discloser with the same degree of care as Recipient accords to Recipient's own Confidential Information, but in no case will Recipient use less than reasonable care. Recipient will disclose Confidential Information only to those of Recipient's employees or agents who have a need to know the information as necessary for Recipient to perform this Agreement. Recipient agrees that each of its employees or agents will have agreed to be bound by terms and conditions at least as protective of Discloser's Confidential Information as the terms and conditions applicable to Recipient under this Section 11.

11.3 Exceptions

Recipient's obligations under Section 11.2 (Non-Disclosure and Non-Use Obligations) will not apply to any of Discloser's Confidential Information that Recipient can demonstrate: (a) was in the public domain at or subsequent to the time the Confidential Information was communicated to Recipient by Discloser, through no fault of Recipient; (b) was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time the Confidential Information was communicated to Recipient by Discloser; or (c) was independently developed by employees or agents of Recipient without use of, or reference to, any Confidential Information communicated to Recipient by Discloser.

11.4 Legally Required Disclosures

A disclosure of any Confidential Information by Recipient: (a) in response to a valid order by a court or other governmental body; or (b) as otherwise required by law, will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided however, that Recipient provides prompt prior written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent the disclosure.

11.5 Ownership and Return of Confidential Information

All Confidential Information and any materials and items (including, without limitation, software, equipment, tools, artwork, documents, drawings, papers, diskettes, tapes, models, apparatus, sketches, designs and lists) that Discloser furnishes to Recipient, are and remain the sole and exclusive property of Discloser or Discloser's suppliers. Upon the earlier of: (a) the termination of this Agreement;

or (b) receipt of a written request by Discloser, Recipient will destroy or deliver to Discloser, at Discloser's option, Discloser's Confidential Information provided to, or obtained by, Recipient pursuant to this Agreement. Recipient will provide Discloser with a written certification of Recipient's compliance with Recipient's obligations under this Section 11 upon request.

11.6 Business Associate Agreement

Notwithstanding any other term in this Agreement to the contrary, Customer Content to the extent it consists of 'Protected Health Information' as defined in the Business Associate Agreement ("BAA") attached as Exhibit A of this Agreement, shall be subject to the terms of the BAA which constitutes an integral part of this Agreement. In the event of any conflict between the terms of the main body of this Agreement and the terms of the BAA, the terms of the BAA shall prevail for purposes of matters set forth in the BAA.

12. Miscellaneous Legal Terms

12.1 Entire Agreement

This Agreement, which term includes all exhibits attached hereto, constitutes the entire agreement between Customer and Elation with respect to the Service and supersedes, cancels and replaces any and all other written or oral agreements or understandings previously existing between Customer and Elation with respect to the Service. All section references in this Agreement refer to corresponding sections in this Agreement, unless otherwise expressly stated.

12.2 Governing Law and Venue

This Agreement will be construed and enforced in all respects in accordance with the laws of California, without reference to its choice of law rules. The federal and state courts seated in San Francisco, California will have sole and exclusive jurisdiction for all purposes in connection with any action or proceeding that arises from, or relates to, this Agreement and Customer hereby irrevocably waives any objection to such exclusive jurisdiction. Notwithstanding the foregoing, either Party may seek injunctive or other equitable relief in any court of competent jurisdiction to protect its proprietary and other rights. Each Party agrees that its or

its agents' breach of this Agreement may result in immediate and irreparable damage to the other Party for which there may be no adequate remedy at law. This Agreement will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act (UCITA) or any other act derived from or related to UCITA. The prevailing Party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

12.3 Government Users

The Service and other Elation Technology to the extent consisting of software is commercial computer software. If the user or licensee of such software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of such software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. All such software was developed fully at private expense. All other use is prohibited.

12.4 No Partnership

The Parties are independent contractors and neither Party, nor its employees or agents, shall have the right or power to bind the other Party. This Agreement does not create an employment, joint venture, agency, franchise, partnership or any similar relationship between the Parties or their respective employees or agents.

12.5 Amendments; Waiver

No supplement, modification or amendment of this Agreement shall be binding, unless executed in a written document which expressly references this Agreement and is signed by a duly authorized representative of each Party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the Party claimed to have waived. No provision of any purchase order or other business form used by Customer will

supersede the terms and conditions of this Agreement, and any such document shall be for administrative purposes only and shall have no legal effect. Except as expressly stated herein, there are no third party beneficiaries to this Agreement.

12.6 Severability

If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

12.7 Notices

All notices delivered in connection with this Agreement, must be given in writing. Notices will be deemed given as of: (a) the day they are delivered by hand; (b) the day they are delivered by express delivery service (such as Federal Express, UPS or DHL); or (c) the day they are delivered by certified prepaid U.S. mail (return receipt requested), in each case addressed as set forth below. In addition, Elation may provide notices or other communications relating to the Service by sending them to the primary contact e-mail address provided by Customer, and Customer hereby consents to receive notices and other communications in electronic form to the extent permitted by applicable law.

Notices to Elation:
Elation Health, Inc.
550 15 Street, Suite 21
San Francisco, CA 94103
or primary address as listed on site
Attn: Kyna Fong
Email: kyna.fong@elationhealth.com

Notices to Customer:
Primary address as provided by Customer

12.8 Assignment

Neither Party may assign or otherwise transfer this Agreement without the prior written consent of the other Party; provided however, that either Party may assign this Agreement to a corporate affiliate or in connection with a merger, sale,

acquisition or corporate reorganization in which it participates, without the consent of the other Party. Any attempt to assign or transfer this Agreement except as expressly authorized under this Section 12.8 will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.

12.9 Force Majeure

Except for Customer's payment obligations hereunder, neither Party will be liable for failing to perform, or delaying performance, of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of the common enemy, earthquake, fire, flood or other acts of God, the elements, epidemics, labor conditions, power failures, and Internet disturbances.

12.10 Audit Right

Upon Elation's written request, Customer will furnish Elation with a signed certification certifying that the Service is being used by Customer pursuant to the terms of this Agreement, including any access and user limitations. With prior reasonable notice of at least ten (10) business days (but not more than once in any calendar year), Elation (or its agent) may audit Customer's use of the Service; provided such audit is during regular business hours and Elation complies with any reasonable confidentiality and security requirements of Customer in connection with such audit. Customer is responsible for Elation's reasonable, documented audit costs only in the event the audit reveals that Customer's use of the Service is not materially in accordance with the terms of this Agreement.

EXHIBIT A

[Business Associate Agreement](#)