

MYCHARTSONLINE.COM, LLC SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (the "Agreement") is entered into by and between MYCHARTSONLINE.COM, LLC, a Massachusetts limited liability company having its principal place of business at 111 Willard Street, Quincy, Massachusetts 02169 ("MCO") and the entity agreeing to the terms and having a principal location as registered with MCO ("Client").

This Agreement governs Client's access to and use of the service available at www.mychartsonline.com. If you are accepting this Agreement on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or the applicable entity, to these terms, (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to the terms of this Agreement.

1. DEFINITIONS

"Agreement" means these online terms of use, any order form, whether written or submitted online, and any materials available on the MCO website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by MCO from time to time in its sole discretion.

"Client Data" shall mean information entered into the Service by the Client.

"Confidential Information" as used in this Agreement shall mean any and all technical and non-technical information of MCO that (i) is not Client's in possession at the time of disclosure as shown by the Client's files and records immediately prior to the time of disclosure; (ii) before or after it has been disclosed to the Client, enters the public domain, not as a result of any action or inaction of the Client; (iii) is approved for release by written authorization of MCO; (iv) is disclosed to the Client by a third party not in violation of any obligation of confidentiality; or (v) is independently developed by the Client without reference to MCO Confidential Information.

"Content" means the information, documents, software, products and services contained in the Services or made available to Client while using the Service.

"Effective Date" is the date the Client clicks the "I Accept" button.

"Intellectual Property Rights" means any unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

"License Term(s)" means the period(s) during which a specified number of Client Users are licensed to use the Service.

"Order Form(s)" means the form evidencing the subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail).

“MCO Technology” means all of MCO’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) made available to Client by MCO in providing the Service.

“Protected Health Information” means information that is subject to the federal regulations issued pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) and codified at 45 C.F.R. parts 160 and 164.

“Service” means collectively, MCO’s online customer practice management, billing, document storage, data analysis, or other electronic health records services identified during the ordering process and developed, operated and maintained by MCO to which the Client is granted access under this Agreement, including the MCO Technology and Content.

“User(s)” means Client’s employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Client (or by MCO at Client’s request).

“Web Host” has the meaning defined in Section 3(c), below.

2. TERM

This Agreement commences on the Effective Date and shall renew monthly until terminated in accordance with this Agreement. Either party may terminate this Agreement or reduce the number of licenses, effective only on thirty (30) days prior written notice.

3. MCO RESPONSIBILITIES

A. MCO agrees to do the following: (i) provide Service to Customer during the term of this Agreement; (ii) comply with applicable laws and standards with respect to the provision of the Service; (iii) use or disclose Protected Health Information only as permitted by this Agreement or as required by law; (iv) maintain a privacy and security program that includes safeguards to reasonably protect the confidentiality, integrity and availability of electronic health information as required by HIPAA; (v) maintain a protocol for responding to and reporting to Client any inappropriate disclosures of Client Data; and (vi) adhere to reasonable security standards no less protective than the security standards required by law.

B. By using the Service, Client consents to the transfer, processing and storage of the Client Data, including the transfer to and processing and storage of data by the Web Host, as defined in Section 3 C. below. MCO may make commercially reasonable modifications to the Service, or particular components of the Service, from time to time. MCO will use commercially reasonable efforts to notify Client of any such changes in advance.

C. MCO shall engage a third party service provider (the “Web Host”) to provide servers and other hardware and to host the Service.

4. CLIENT RESPONSIBILITIES

A. Client agrees to do the following: (i) be responsible for all activity occurring under Client’s User accounts; (ii) abide by all applicable local, state, national and foreign, laws, treaties and regulations in connection with its use of the Service, including those related to data privacy, international communications, and the transmissions of technical or personal data.

B. Under no circumstances shall the Client's User accounts be shared with multiple people. Client Users must keep their account username and password secure. Lost or forgotten usernames or passwords must be reported to MCO and new usernames and/or passwords must be issued. To protect patient privacy, MCO has no reasonable way of accessing Client's records without Client's username and password.

C. Client will (i) comply with this Agreement, and will use best efforts to ensure that the Users do the same; (ii) use best efforts to prevent unauthorized use of any password or account or any other known or suspected breach of security; (iii) notify MCO immediately and use best efforts to stop immediately any copying or distribution of Content that is known or suspected by Client or Users; and (iv) not impersonate another MCO user or provide false identity information to gain access to or use the Service.

D. Client will maintain its records in a manner consistent with its legal and ethical requirements.

E. Client shall be responsible for providing its own Internet access to the Service and in no case shall Client be provided with direct access (by modem or otherwise) to the server on which the Service resides or MCO's other computer systems.

5. ACCOUNT INFORMATION AND DATA

Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Client Data, and MCO shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data. In the event this Agreement is terminated for any reason, MCO will make available to Client a file of Client Data within 30 days of termination. Except as may otherwise be required by applicable law, Client agrees and acknowledges that MCO has no other obligation to retain the Client Data, and may delete such Client Data from and after the date falling thirty (30) days after termination.

6. SUPPORT

MCO uses commercially reasonable efforts to provide support to its Users online, via Email, or via phone during normal business hours in Boston. If Client cannot resolve a support issue, then Client may escalate the issue to MCO in accordance with applicable procedure as determined from time to time by MCO. If client support requires our soft ware engineer support to fix or determine cause of client issue, client will be charged \$125 per hour in half hour increments.

7. INTELLECTUAL PROPERTY RIGHTS

A. It is understood and agreed that MCO is the owner of all rights, title and interest to the Intellectual Property Rights in the MCO Technology, the Service and the Content, regardless of the media or form in which the Service is accessed, and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or any other party relating to the MCO Technology, the Content and the Service. This Agreement is not a sale and does not convey to Client any rights of ownership in or related to the Content, the Service, the MCO Technology or the Intellectual

Property rights therein. MCO's name, logo and the product names associated with the Service are trademarks of MCO and no right or license is granted to use them.

B. Client shall not modify, sublicense, assign, or transfer any aspect of the Service or Content, or any rights under this Agreement, except as expressly provided herein. Any attempt to sublicense, assign, or transfer any of Client's rights, duties, or obligations will be void.

C. Client acknowledges MCO's exclusive rights in the Service, the Content, MCO Technology and the Intellectual Property Rights therein and that the Content, Service, MCO Technology and Intellectual Property Rights are unique and original to MCO and that MCO is the owner thereof. Unless otherwise permitted by law, Client shall not, at any time during or after the effective term of the Agreement, dispute or contest, directly or indirectly, MCO's exclusive right and title thereto. If Client disputes or contests such rights, MCO may terminate this Agreement and all licenses granted hereunder.

8. LICENSE

A. During the term and pursuant to the provisions of this Agreement, MCO grants to Client a non-exclusive, non-transferable personal end-user license right to use the Service, solely for Client's own internal business purposes and subject to the terms of this Agreement.

B. Client may not access the Service if Client is a direct competitor of MCO, without MCO's prior explicit written consent based on full disclosure. In addition, Client may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

C. Client shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based on the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

9. PROTECTED HEALTH INFORMATION

A. Client shall be solely responsible for the input of Client Data. Storage of and access to the Client Data once entered shall be the responsibility of the Web Host. MCO employees will not have access to passwords or other security information used to secure Client Data. Operation and network connectivity of servers hosting the Service shall be the responsibility of the Web Host.

B. MCO agrees to comply with all applicable confidentiality and security laws and requirements, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and its regulations. Without limiting the foregoing, MCO agrees to do the following:

1. Use and disclose Protected Health Information ("PHI") only as required by law or to carry out the purposes of the Agreement to the extent the use or disclosure would not violate the privacy regulations if done by the Client or the minimum necessary policies and procedures of the Client;

2. Use all appropriate safeguards to prevent the unauthorized use or disclosure of PHI. More specific guidance as to what constitutes appropriateness, for electronic PHI, is provided in C.F.R. parts 160;
3. Immediately report any misuse or disclosure of PHI that is not provided for herein to the Client and use reasonable efforts to mitigate any harmful effect;
4. If a subcontractor or agent of MCO creates or has access to PHI, ensure that such subcontractor or agent contractually agrees with MCO to the same restrictions and conditions that apply to MCO with respect to such information;
5. Provide access to and amend PHI in a “designated record set” (as defined in 45 CFR 164.501);
6. Make its internal practices, books, and records, including without limitation its policies and procedures and PHI, relating to services provided under the Agreement available to Client, or upon its request to the Secretary of Health and Human Services, for purposes of determining Client’s compliance with HIPAA privacy regulations;
7. Document disclosures of PHI and information related to such disclosures as would be required for Client to respond to an individual’s request for an accounting of such disclosures in accordance with the privacy regulations (with records of disclosures indicating the date of disclosure, the name of the recipient and address if known, a brief description of the protected health information disclosed, and a brief statement of the purpose and basis of the disclosure), and provide such information in the time and manner requested by Client;
8. Upon expiration or termination of the Agreement, return all PHI that is received from Client or created or received on behalf of Client and maintained by MCO in comma-separated values file (CSV). MCO shall not retain any copies of such PHI; and
9. Further amend this Agreement if necessary to comply with privacy, security, or other applicable legal requirements.

10. PAYMENT

A. Client shall pay all fees or charges to Client’s account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The charges will be equal to the current number of total User licenses requested multiplied by the User license fee currently in effect. Client is responsible for paying for all User licenses ordered for the entire License term, whether or not such User licenses are actively used. Client must provide MCO with a valid credit card as a condition to signing up for the Service. MCO charges and collects in advance in U.S. Dollars for use of the Service. Payments must be made monthly in advance. The renewal charge will be equal to the then-current number of total User licenses multiplied by the license fee then in effect. Fees for other services will be charged as quoted. MCO’s fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Client shall be responsible for payment of all such taxes, levies, or duties, excluding only U.S. (federal or state) taxes based solely on MCO’s income.

B. Client agrees to provide MCO with complete and accurate billing and contact information. This information includes Client’s legal name, street address, email address, and the name and telephone number of an authorized billing contact. Client agrees to update this information within 30 days of any change. If the contact information is false or fraudulent, MCO reserves the right to terminate Client’s access to the Service in addition to any other legal remedies.

- C. All payment obligations are non-cancelable and all amounts paid are nonrefundable.
- D. Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting License Term, and (ii) the license fee for the added licenses will be the then-current, generally applicable license fee set by MCO.
- E. MCO reserves the right to modify its fees and charges and to introduce new charges at any time upon at least 30 days prior notice to Client, which notice may be provided by Email.
- F. All pricing terms not published on MCO's website are confidential and client agrees not to disclose them to any third party.
- G. If Client believes a bill is incorrect, Client must contact MCO in writing within 10 days of the credit card charge containing the amount in question to be eligible for an adjustment or credit.
- H. In addition to any other rights granted to MCO herein, MCO reserves the right to suspend or terminate this Agreement and Client's access to the Service if Client's account becomes delinquent. Delinquent invoices and accounts are subject to interest of 2% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Client will continue to be charged for User licenses during any period of suspension. If Client or MCO initiates termination of this Agreement, Client will be obligated to pay the balance due on Client's account.

11. WARRANTIES

- A. MCO warrants that it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Services will perform substantially in accordance with online MCO documentation under normal use and circumstances.
- B. Client warrants that it has not falsely identified Client nor provided any false information to gain access to the Service and that the Client's billing information is correct.
- C. Each party warrants that it has the legal power and authority to enter into this Agreement.
- D. EXCEPT FOR THE ABOVE EXPRESS WARRANTIES, MCO MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. MCO DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL ENTITLE OR QUALIFY CLIENT FOR ANY GOVERNMENTAL OR OTHER STIMULOUS OR INCENTIVES INCLUDING, BUT NOT LIMITED TO, THOSE UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OR BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (B) THE SERVICE WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS; (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CLIENT THROUGH THE SERVICE WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE SERVICE OR THE SERVERS THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO CLIENT STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED

WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED BY MCO TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

12. LIMITATION ON LIABILITY

A. CLIENT ACKNOWLEDGES AND AGREES THAT THE CHARGES IT IS PAYING UNDER THIS AGREEMENT DO NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY MCO OF THE RISK OF CLIENT'S CONSEQUENTIAL OR INCIDENTAL DAMAGES OR OF UNLIMITED DIRECT DAMAGES. ACCORDINGLY, MCO SHALL HAVE NO LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, FOR CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL MCO BE LIABLE TO CLIENT FOR CUMULATIVE DIRECT DAMAGES IN ANY AMOUNT GREATER THAN THAT PAID BY CLIENT TO MCO UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF THE CAUSE OF ACTION.

13. MUTUAL INDEMNIFICATION

A. Client shall indemnify and hold MCO, its licensors, subsidiaries, affiliates, officers, directors, members, managers, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with (i) a claim related to Client's professional services or malpractice; (ii) a claim alleging that use of the Client Data infringes the rights of, or has caused harm to, a third party; (iii) a claim, which if true, would constitute a violation by Client of Client's representations and warranties; or (iv) a claim arising from the breach by Client or Client's Users of this Agreement, provide in any such case that MCO (a) gives written notice of the claim promptly to Client; (b) gives Client sole control of the defense and settlement of the claims (provided that Client may not settle or defend any claim unless Client unconditionally releases MCO of all liability and such settlement does not affect MCO's business or the Service); (c) provides to Client all available information and assistance; and (d) has not compromised or settled such claim.

B. MCO shall indemnify and hold Client and Client's subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all third party claims, costs, damages, losses, and expenses (including attorney's fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a U.S. copyright, a U.S. patent issued as of the Effective Date, or a U.S. trademark of a third party; (ii) a claim, which if true, would constitute a violation by MCO of its representations or warranties; or (iii) a claim arising from breach of this Agreement by MCO; provided that Client (a) promptly gives notice of the claim to MCO; (b) gives MCO sole control over the defense and settlement of the claim (provided MCO may not settle or defend any claim unless it unconditionally releases Client of all liability); (c) provides to MCO all available information and assistance; and (d) has not compromised or settled such claim. MCO shall have no indemnification obligation, and Client shall indemnify MCO pursuant to this Agreement, for claims arising from any action arising from the combination of the Service with any of Client's products, services, hardware, business processes, or professional services.

14. ADDITIONAL RIGHTS.

Certain states or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to Client.

15. INTERNET DELAYS.

MCO's services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. MCO is not responsible for any delays, delivery failures or other damage resulting from such problems.

16. MODIFICATION TO TERMS.

MCO reserves the right to modify the terms of this Agreement or its policies relating to the Services at any time effective upon posting such change on the Service. Client is responsible for regularly reviewing this Agreement and postings on the Service. Continued use of the Service after any such changes shall constitute Client's consent to such changes.

17. LOCAL LAWS AND EXPORT CONTROL.

MCO provides services and uses software and technology that may be subject to U.S. export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and other U.S. Agencies and the export control regulations of Switzerland and the European Union. Client acknowledges and agrees that the software and Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries which the United States, Switzerland and/or the European Union maintain an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The list of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, Client represents and warrants that Client is not located in, under the control or, or a national or resident of an Embargoed Country or Designated National, Client agrees to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Client is solely responsible for compliance with all applicable laws, including without limitation, export and import regulations of other countries.

18. TERMINATION

A. This Agreement may be terminated with or without cause on thirty (30) days prior written notice given by either party to the other.

B. Any breach of Client's payment obligations or unauthorized use of the MCO Technology or Service will be deemed a material breach of this Agreement. MCO, in its sole discretion, may terminate Client's password, account or use of the Service if Client breaches or otherwise fails to comply with this Agreement. MCO may terminate a free account at any time in its sole discretion.

C. This Agreement may be terminated by either party immediately upon written notice if the other party (a) becomes the subject of any proceeding relating to insolvency, receivership or liquidation; (b) files a petition in bankruptcy; or has filed against it a petition in bankruptcy which is not discharged

within ninety (90) days thereof; (c) makes an assignment for the benefit of its creditors; or (d) admits in writing its inability to pay debts as they become due.

19. CONFIDENTIAL INFORMATION

Client agrees not to use copy, alter, modify, disassemble, reverse engineer or decompile any of the materials comprising Confidential Information, unless permitted in writing by MCO. Client agrees not to disclose the Confidential Information to any third parties or to any of its employees, contractors or agents except those of whom who have a need to know the MCO's Confidential Information to enable the Client to use the Services provided, that such parties shall be made aware that such Confidential Information is confidential and shall be under a written contractual restriction on non-disclosure and proper treatment of Confidential Information that is consistent with and no less restrictive than the terms of this Section. Client agrees that it shall treat the Confidential Information with the same degree of care as it accords its own confidential information of a similar nature; provided that in no event shall the Client exercise less than reasonable care to protect the Confidential Information. Client agrees to advise MCO in writing of any misappropriation or misuse by any person of the Confidential Information of which the Client may become aware.

20. MISCELLANEOUS

(a) Relationship of the Parties. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

(b) Notices and Payments. Any notices required or permitted under this Agreement shall be in writing and shall be deemed given when delivered personally, via electronic mail, mailed by certified mail, return receipt requested or delivered by a national overnight delivery service prepaid and addressed to MCO at 111 Willard Street, Quincy, MA 02169 and to the Client at the address given during registration.

(c) Integration. This Agreement together with all exhibits and other related documents that are incorporated herein by reference, if any, embodies the entire Agreement and except as otherwise contemplated herein, supersedes all prior agreements, written and oral, relating to the subject matter hereof. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, the Agreement shall take precedence.

(d) Waiver. The failure of any party hereto to enforce any provision of this Agreement, or any right with respect hereto, or failure to exercise any election provided for herein, shall in no way be considered a waiver of such provision, right, or election, or in any way affect the validity of this Agreement. The failure of any party hereto to enforce any provision, right or election shall not prejudice such party from later enforcing or exercising that provision, right, or election which it has under this Agreement.

(e) Jurisdiction and Disputes. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to choice of law provisions. Any disputes hereunder shall be brought within one (1) year of the date on which the party becomes aware of any such action or claim or shall otherwise be fully and completely waived. Any and all disputes arising out of or relating to this Agreement shall be finally resolved by arbitration in accordance with JAMS Arbitration Rules then currently in effect, by one independent arbitrator. If the parties fail to agree on the arbitrator within 15 days of commencement of the arbitration, then the parties will allow JAMS to select the neutral arbitrator pursuant to its rules then currently in effect. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C., §§1 et seq. and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be Boston,

Massachusetts. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any disputes arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances. Nothing in this Agreement shall prohibit a party from instituting litigation to enforce any final determination by the arbitrator in any state or federal court in the Commonwealth of Massachusetts.

(f) Force Majeure. If the performance of this Agreement, or any obligation hereunder, except the making of payments hereunder, is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference.

(g) Assignment. This Agreement may not be assigned by CLIENT without the express written consent of MCO.

(h) Survival. The obligations to make any payments that have been earned or accrued as of date of termination shall nonetheless remain payable. Sections 5, 7, 9, 11D, 12, 13, 14, 17, 19 and 20 shall survive the expiration or earlier termination of this Agreement for any reason as shall any payment obligations of the Client.