



EncaptureMD SaaS Agreement

This EncaptureMD Customer Agreement (“Agreement”) is effective as of the date of execution of the operative Order Form (the “Effective Date”) by and between the entity specified on the Order Form (“Customer”) and Flexible Informatics (“FI”). By signing the Quote Order Form, Customer agrees to the terms of this Agreement.

1. **Right to Use Products.** Subject to the terms and conditions of this Agreement, FI hereby grants Customer a non-exclusive, non-transferable right to use the products, applications and services described in the Quote Order Form incorporated herein (collectively, the “Products”). Customer may add additional products and services (which may require additional fees).

1.1 **Access to Products.** During the Term of this Agreement, FI will use commercially reasonable efforts to make the Products that are available through the online platform, if Customer has contracted for such component of the Products, available to Customer 24 hours a day, 7 days a week. Access to the Products may be limited during planned downtimes, as well as due to factors outside of FI’s control, including Force Majeure, problems internal to Customer’s network, dysfunction of third party software or other technology. In order to access the Products, each Authorized User will be required to enter into the then-current EncaptureMD End User License Agreement (“EULA”), which may be found at www.flexibleinformatics.com. The form of EULA that is current as of the Effective Date is attached in Schedule C. Customer’s use is limited to the designated Products as provided in Schedule A.

1.2 **Support.** FI will make commercially reasonable efforts to promote Customer’s successful utilization of the Products, including providing appropriate documentation, as determined by FI, (the “Documentation”) and customer support. Support shall be as provided in attached Schedule B at level specified in in the Quote Order Form.

1.3 **Training.** In the event that Customer desires training services, Customer may request such services, and the scope, term and fees for such services shall be as provided in the operative Quote or Proposal accepted by Customer.

1.4 **Professional Services.** In the event that Customer desires any customization, integration, consulting or other professional services, the scope, term and fees for such services shall be as provided in the operative Quote or Proposal accepted by Customer.

2. **Customer Obligations.** In addition to any other obligations set forth in this Agreement, Customer shall (i) not rent or lease the Products to another individual or entity, or otherwise make the Products available to any third party other than Authorized Users; (ii) ensure that its Authorized Users act in compliance with this Agreement and the EULA; (iii) prevent unauthorized access to or use of the Products by Customers employees and agents and users of the Product with access enabled by Customers employees and agents (including maintaining the confidentiality of all passwords); (iv) promptly notify FI if Customer becomes aware of any unauthorized access; (v) interfere or disrupt the Products or attempt to gain unauthorized access to the Products or their related systems.



2.1 **Compliance with Law.** Customer (and its Authorized Users) shall use the Products in compliance with all published laws and guidelines including, but not limited to HIPAA (Health Insurance Portability and Accountability Act Security Rule - Centers for Medicare & Medicaid Products (CMS) “Security Standards for the Protection of Electronic Protected Health Information,” found at 45 CFR Part 160 and Part 164, Subparts A and C), which provides rules for securing electronic protected health information (EPHI).

2.2 **Customer Data.** The Products assist in the creation of medical reports based upon entered data. The Products and FI staff do not provide diagnoses or medical advice. Customer shall be solely responsible for the accuracy, integrity and legality of its data it enters, stores and/or accesses using the Products. The Authorized User using the Products is ultimately and solely responsible for the data.

3. **System Requirements.** Customer may be responsible for the purchase or license of additional equipment and software necessary to install and properly operate the Products as detailed in the Documentation set forth at www.flexibleinformatics.com. The Products may be subject to storage limitations, as set forth in the Documentation. FI has advised Customer of the equipment necessary to run the Products properly. Future versions of the Products may require additional equipment and/or software, as well as updated versions of the additional equipment and software. FI is not responsible for problems that result from the use of the Products in conjunction with the software of third parties or with hardware which is incompatible with the operating system for which the Products are being procured.

3.1 **Third Party Products.** FI may offer online applications and/or offline software products that are provided by third parties (“Third Party Products”). FI does not make any warranties or representations as to third party applications or products, including the Third-Party Products, and refers Customer to review third party documentation and direct questions regarding Third Party Products to the third-party provider. If Customer uses Third Party Products with the Products, FI may provide the third-party providers access to Customer’s Data, as required for use of the Third-Party Products with the Products. FI shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any access by such third-party providers.

4. **Fees and Payment.** Unless otherwise specified in the Order, Quote or Proposal Customer shall pay for any hardware, software, products or services within 30 days of the initial signed Agreement. Ongoing support, subscription or other ongoing periodic charges are due in advance of the applicable monthly, quarterly or annual period starting from the date of the initial signed agreement. In the event that payment is not timely made in accordance with the payment terms, then at FI’s discretion (i) such charges may accrue late interest at the rate of 1% of the outstanding balance per month, or the maximum rate permitted by law (whichever is lower) and/or (ii) FI may suspend Customer’s right to use the Products until such time as payment is made as long as Customer is notified 10 business days prior of intent to suspend.

4.1 **Taxes.** FI’s fees do not include any taxes, duties or similar governmental assessments, whether local, state or federal. Customer is responsible for paying all taxes associated with its purchase of the Products.



5. **Disclaimer of Warranty.** FI WARRANTS THAT THE PRODUCTS SHALL PERFORM MATERIALLY IN ACCORDANCE WITH THE DOCUMENTATION. CUSTOMER'S SOLE REMEDY FOR BREACH OF THE FOREGOING WARRANTY SHALL BE TERMINATION OF THE AGREEMENT IN ACCORDANCE WITH SECTION 10.1 BELOW. FI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PRODUCTS WILL MEET THE REQUIREMENTS OF CUSTOMER OR ITS AUTHORIZED USERS. FI DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT THE DOCUMENTATION IS ERROR-FREE. FI SPECIFICALLY DISCLAIMS ANY AND ALL ADDITIONAL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE PRODUCTS OR THE DOCUMENTATION OR ANY SERVICES. FURTHERMORE, FI MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY THIRD-PARTY SOFTWARE OR HARDWARE THAT MAY BE PROVIDED TO CUSTOMERS IN COMBINATION WITH THE PRODUCTS.

6. **Proprietary Rights.**

6.1 **Ownership of the Products.** FI owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to the Products and Documentation, as well as updates, improvements, derivatives and translations thereto, if any. Customer shall not (nor permit others to) (i) create derivative works based on the Products; (ii) copy any features, functions or graphics of the Products; (iii) translate, disassemble, decompile, or reverse engineer the software underlying the Products or otherwise attempt to reconstruct or discover any source code or underlying algorithms of the Products; or (iv) enable or disable features of the Products or otherwise modify, alter or change the Products (except to configure the Products by means of the user-enabled features of the Products) or Documentation in any manner. FI shall have a royalty-free license to incorporate into the Products any suggestions or other feedback provided by Customer or its Authorized Users relating to the operation of the Products. All rights not expressly granted by FI pursuant to this Agreement are reserved by FI.

6.2 **Ownership of Data.** As between Customer and FI, Customer owns all right, title and interest in data provided by Customer and its Authorized Users. FI will not access data, except to provide the Products, to respond to service or technical problems, to confirm compliance with the terms of this Agreement, or otherwise at Customer's direction, request or as expressly permitted. FI will not disclose Customer's data to any third party other than as permitted under this Agreement and with third parties that are bound to protect the confidentiality of the data. FI is responsible or liable in regard to Customer's data only if and to the extent that any deletion, alteration, destruction, damage, loss or failure to store the data is directly and proximately caused by FI's actions, and any such responsibility or liability is subject to all limitations set forth in this Agreement.

Customer understands and agrees that FI may use and disclose anonymous data and anonymous specific metrics derived from Customer's data and Customer's use of the Products



for FI's business purposes provided that any such data is aggregated and not personally identifiable, and such use and disclosure is not prohibited by applicable law and HIPAA.

7. **Confidentiality.** As used herein, "Confidential Information" means all information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party") that is designated as confidential or that reasonably should be considered as confidential. Confidential Information may or may not be specifically identified as "confidential." Without limitation, Confidential Information includes the any and all technical and non-technical information, whether in oral, written, graphic, machine-readable, tangible or intangible form, relating to a disclosing Party's products, services and other business activities, and/or to future, or proposed products, services or other business activities of such Party, its suppliers and/or licensors, including, but not limited to, trade secrets, knowledge, formulas, design details and specifications, engineering, sources of supply, processes, production and manufacturing methods and secrets, merchandising methods and trade information, computer code (source code and object code), hardware configurations, algorithms, inventions, patent applications, know-how, products, equipment, computer programs, customer lists, agreements with third parties, forms, price lists, financial statements, business forecasts and projections, marketing and business plans, information relating to customers, potential customers, and other information regarding the financial or business affairs of the disclosing Party, its suppliers and/or licensors.

Notwithstanding the foregoing, Confidential Information shall not include any information (i) that is or becomes generally known to the public without breach of any obligation by the Receiving Party; (ii) that was known by the Receiving Party prior to disclosure by the Disclosing Party; (iii) which is developed independently by the Receiving Party; or (iv) was received from a third party without any breach of obligation to the Disclosing Party. The Receiving Party shall not disclose Confidential Information or use such Confidential Information for any purpose outside of this Agreement; provided that the Receiving Party may disclose Confidential Information of the Disclosing Party to employees, contractors and agents of the Receiving Party that (i) need access to the Confidential Information for purposes consistent with this Agreement and (ii) that agree to maintain the same confidentiality restrictions on the Confidential Information (and the Receiving Party shall be liable for any violation by its employees, contractors or agents of the foregoing.) The Receiving Party may disclose Confidential Information of the Disclosing Party if it is required by law, subpoena or court order to do so, provided that the Receiving Party provides prior notice to the Disclosing Party of such compelled disclosure and the opportunity to object to such disclosure.

8. **Indemnity.** FI will indemnify and defend Customer against any claim, demand, suit or proceeding ("Claim") made or brought against Customer by a third party that alleges that the use of the Products as permitted hereunder infringes the intellectual property rights of such third party. Customer will indemnify and defend FI against any Claim made or brought against FI by a third party alleging that Customer's data or Customer's (or any of its Authorized Users') use of the Products in violation of this Agreement infringes the intellectual property rights of such third party or violates applicable law. In either case, the party seeking to be indemnified must (i) promptly give the other party written notice of the Claim; (ii) allow the other party sole control of the defense and settlement of the Claim (so long as the settlement releases the party to be indemnified from all liability on the Claim); and (iii) provide reasonable assistance to the



indemnifying party. This section states the indemnified party's sole remedy against the indemnifying party for any Claim described in this section.

9. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF DATA, OR LOSS OF PROFITS OR REVENUE) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE. FI'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER FOR DAMAGES RELATED TO THIS AGREEMENT OR ANY PRODUCTS, SERVICES OR DOCUMENTATION THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE LICENSE FEES PAID TO FI IN THE 12 MONTHS PRECEDING THE INCIDENT.

10. **Term and Termination.**

10.1 **Term.** This Agreement shall have an initial one-year term from the Effective Date, and will automatically renew for additional one-year terms unless terminated in writing at least thirty (30) days in advance of the applicable expiration date by either FI or Customer. The pricing shall remain the same unless FI provides written notice of a pricing change at least forty-five (45) days prior to the expiration date, in which case the new pricing shall apply to the renewal term. FI may also notify Customer of other changes to the terms of this Agreement at least forty-five (45) days prior to the expiration date, which new terms shall apply to any renewal of this Agreement.

10.2 **Termination.** Either party may terminate this Agreement for cause if the other party breaches the terms of this Agreement and fails to cure the breach within thirty (30) days of written notice from the non-breaching party. If Customer terminates this Agreement for cause, FI will refund any prepaid fees for the period following the date of termination. Either party may terminate this Agreement without cause within ninety (90) days of written notice. If Customer terminates this Agreement without cause initial and annual payment obligations shall survive for the calendar year of the cancellation.

10.3 **Survival.** Sections 6, 7, 8 and 9 of this Agreement shall remain in force following termination.

11. **General.**

11.1 **Compliance with U.S. Export Laws.** Customer acknowledges that the laws and regulations of the United States may restrict the export and re-export of commodities and technical data of United States origin, including the Products in any medium. Customer agrees that it will not export or re-export the Products in any form without the appropriate United States and foreign government licenses.



11.2 Relationship of the Parties. The parties are independent contractors. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties or to allow either party to bind the other or incur any obligation on its behalf. There are no third-party beneficiaries to this Agreement.

11.3 Waiver. The failure of either party to exercise any right hereunder shall not constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not in lieu of, any other remedies at law or equity.

11.4 Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such provision shall be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions, and the remaining provisions of this Agreement shall remain in effect.

11.5 Controlling Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without reference to its conflict of laws provisions, and shall come under the exclusive jurisdiction of the Courts located in Philadelphia County in the Commonwealth of Pennsylvania.

11.6 Publicity. FI may issue a press release, marketing or similarly materials disclosing the existence of this Agreement and the non-financial terms hereof.

11.7 Assignment. FI may assign this Agreement in whole or in part. Customer may not assign this Agreement nor its obligations pursuant to these terms and conditions without FI's prior written consent. This Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

11.8 Entire Agreement. Except as expressly provided herein, this Agreement, including all Exhibits and Schedules attached hereto, constitutes the entire agreement between FI and Customer, and supersedes any prior or contemporaneous agreement or understanding, whether written or oral, and any other communications between FI and Customer relating to the subject matter of this Agreement. Terms or conditions contained in any this Agreement may be amended or modified only by a writing signed by both parties. Without limiting the foregoing, this Agreement will not be modified by any terms contained in an order form, unless such modification is expressly agreed to in writing by FI.

11.9 Force Majeure. Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the nonperforming party.

11.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.



Schedule A – Order Form Products and Service

The scope, term and fees for such services shall be as provided in the operative Quote or Proposal accepted by Customer



Schedule B - Support Service Level Agreement

Area	Standard Support	Premier Support	
Hours of coverage	Standard business hours (8-5 PM)	Standard business hours (24x7 for Severity 1 and 2)	
Language	English	English	
Support channel	Web and phone	Web and phone	
Number of cases	Unlimited	Unlimited	
Developer Environment Support	No	Yes	
Response times	Initial and ongoing response	Initial response	Ongoing response
Severity 1	1 business hour	1 hour	1 hour or as agreed
Severity 2	4 business hours	2 hours	4 hours or as agreed
Severity 3	1 business day	4 business hours	8 business hours or as agreed
Severity 4	2 business day	8 business hours	2 business days or as agreed

In order to provide you with 24x7 coverage client will identify a dedicated point of contact who will be available until the issue is resolved.

Support Severity Level Definitions

Support Services use the following definitions to classify issues:

Severity 1 (urgent)

A problem that severely impacts your use of the software in a production environment (such as loss of production data or in which your production systems are not functioning). The situation halts your operations and no procedural workaround exists.

Severity 2 (high)

A problem where the software is functioning but your use in a production environment is severely reduced. The situation is causing a high impact to portions of your business operations and no procedural workaround exists.

Severity 3 (medium)

A problem that involves partial, non-critical loss of use of the software in a production environment or development environment. For production environments, there is a medium-to-low impact on your business, but your business continues to function, including by using a procedural workaround. For development environments, where the situation is causing your project to no longer continue or migrate into production.

Severity 4 (low)

A general usage question, reporting of a documentation error, or recommendation for a future product enhancement or modification. For production environments, there is low-to-no impact on your business or the performance or functionality of your system. For development environments, there is a medium-to-low impact on your business, but your business continues to function, including by using a procedural workaround.

Support of the Developer Module is solely for the modification of the Licensed Products. New Application development is not licensed or supported.



Schedule C - EULA

EncaptureMD End User License Agreement

IMPORTANT-READ CAREFULLY: This EncaptureMD End User License Agreement (“EULA”) is a legal agreement between you (referred to as “You”) and Flexible Informatics (referred to as “FI”) for the use of its EncaptureMD Products. BY USING THE SERVICES, YOU ARE ACCEPTING AND AGREEING TO THE TERMS AND CONDITIONS OF THIS EULA. If You do not agree to the terms of this EULA, do not access or use the Products [and promptly destroy your passcode].

- Right to Use Products.** Subject to the terms and conditions of this EULA, FI hereby grants You a non-exclusive, non-transferable license to access and use the following Products: EncaptureMD platform and associated applications (the “Products”). FI will use commercially reasonable efforts to make the Products available. Access to the Products may be limited during planned downtime, as well as factors beyond the control of FI. Access to the Products is being provided pursuant to this EULA and the EncaptureMD Customer Agreement for which you are an Authorized User (as defined in the Customer Agreement). In the event of any termination of the Customer Agreement, your rights under this EULA shall automatically terminate.
- Restrictions on Use.** You may not (i) rent or lease the Products to another individual or entity, or allow access to anyone who is not an “Authorized User” under the Customer Agreement; (ii) share any non-public information about the Products with any other party (other than another Authorized User); (iii) create derivative works based on the Products; (iv) copy any features, functions or graphics of the Products; (v) translate, disassemble, decompile, or reverse engineer the software underlying the Products or otherwise attempt to reconstruct or discover any source code or underlying algorithms of the Products; or (vi) enable or disable features of the Products or otherwise modify, alter or change the Products (except to configure the Products by means of the user-enabled features of the Products) or Documentation in any manner. You agree to use the Products in compliance with any User guides or protocols furnished by FI. You shall use the Products in compliance with all published laws and guidelines including, but not limited to HIPAA - (Health Insurance Portability and Accountability Act Security Rule - Centers for Medicare & Medicaid Products (CMS) “Security Standards for the Protection of Electronic Protected Health Information,” found at 45 CFR Part 160 and Part 164, Subparts A and C) which provides rules for securing electronic protected health information (EPHI).
- Customer Data.** The Products assist in the creation of medical reports based upon entered data. The Products and FI staff do not provide diagnoses or medical advice. You are solely responsible for the accuracy, integrity and legality of any data you enter, store and/or access using the Products and for the content of any generated reports.
- Disclaimer of Warranty.** FI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL MEET THE REQUIREMENTS OF CUSTOMER OR ITS AUTHORIZED USERS. FI DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT THE DOCUMENTATION IS ERROR-FREE. FI SPECIFICALLY DISCLAIMS ANY AND ALL ADDITIONAL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED



TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE PRODUCTS OR THE DOCUMENTATION. FURTHERMORE, FI MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY THIRD-PARTY SOFTWARE OR HARDWARE THAT MAY BE PROVIDED TO CUSTOMERS IN COMBINATION WITH THE PRODUCTS.

5. Proprietary Rights.

FI owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to the Products and Documentation, as well as updates, improvements, derivatives and translations thereto, if any. FI shall have a royalty-free license to incorporate into the Products any suggestions or other feedback provided by You relating to the operation of the Products. All rights not expressly granted by FI pursuant to this Agreement are reserved.

You or your employer own all right, title and interest in the data entered, stored or accessed using the Products. FI or its agents will not access your data, except to provide the Products, to respond to service or technical problems, to confirm compliance with the terms of this Agreement, or otherwise at you or your employer's direction, request or as expressly permitted. FI will not disclose such data to any third party other than as permitted under this Agreement and with third parties that are bound to protect the confidentiality of the data. FI is responsible or liable in regard to such data only if and to the extent that any deletion, alteration, destruction, damage, loss or failure to store the data is directly and proximately caused by FI's actions, and any such responsibility or liability is subject to all limitations set forth in this Agreement.

You understand and agree that FI may use and disclose anonymous data and anonymous specific metrics derived from your data and your use of the Products for FI's business purposes provided that any such data is aggregated and not personally identifiable, and such use and disclosure is not prohibited by applicable law.

6. Limitation of Liability. IN NO EVENT SHALL FI BE LIABLE TO YOU FOR ANY DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES AS A RESULT OF LOSS OF TIME, LOSS OF DATA, LOSS OF PROFITS OR REVENUE, OR ANY OTHER PECUNIARY LOSS) ARISING FROM THE USE OR INABILITY TO USE THE PRODUCTS. YOU AGREE NOT TO PURSUE ANY CLAIMS AGAINST FI RELATING TO THE PRODUCTS. ALL CLAIMS MUST BE PURSUED BY THE CUSTOMER PURSUANT TO THE CUSTOMER AGREEMENT.

7. Term. This EULA terminates on the earlier of (i) such time as You cease to be an Authorized User of Customer (as provided in the Customer Agreement) or (ii) any termination of the Customer Agreement. FI reserves the right to terminate this EULA if You fail to comply with the terms and conditions of this EULA. FI may also terminate this EULA in order to provide an updated EULA at a future date or if the Products are upgraded or terminated by FI. Upon any termination of this EULA, Your right to utilize the Products shall cease, except that FI will either, in its sole discretion, provide a copy of or continue to provide access to certain records or



data if so required under applicable law. Sections 5 and 6 of this EULA shall remain in force following termination.

8. Compliance with U.S. Export Laws. You acknowledge that the laws and regulations of the United States may restrict the export and re-export of commodities and technical data of United States origin, including the Products in any medium. You agree that you will not export or re-export the Products in any form without the appropriate United States and foreign government licenses.

10. General. This EULA constitutes the entire understanding of FI and You. You may not modify or assign the EULA or the license to use the Products. In the event that any provision of this Agreement shall be unenforceable or invalid, such provision shall be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law, and the remaining provisions of this Agreement shall remain in effect. The failure of FI to exercise any right hereunder shall not constitute a waiver of that right. This EULA shall be governed by the laws of the Commonwealth of Pennsylvania and shall come under the exclusive jurisdiction of the Courts of the County of Philadelphia in the Commonwealth of Pennsylvania.



Schedule D - Business Associate Agreement

Business Associate Agreement

This EncaptureMD Customer Agreement (“Agreement”) is effective as of the date of execution of the operative Order Form (the “Effective Date”) by and between the entity specified on the Order Form (“Customer”) and Flexible Informatics (“FI”). By signing the Quote Order Form, Customer agrees to the terms of this Agreement.

Whereas, FI, the Business Associate, is in the business of providing technology solutions that allow for the creation, transmission, and storage of Protected Health Information (“PHI”) as defined in the privacy regulations of the Health Insurance Portability and Accountability Act (“HIPAA”), 45 CFR Part 160 and 164, whether in paper or electronic format, and
Whereas, Customer uses Business Associate’s services to create, transmit and store PHI, the parties intending to be legally bound agree as follows:

This Agreement applies only if and to the extent that we are your “Business Associate” as defined in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health (HITECH) provisions of the American Recovery and Reinvestment Act of 2009, and the regulations promulgated thereunder, as each may be amended from time to time (collectively, “HIPAA”).

1. Obligations and Activities of Business Associate: with regard to its use and disclosure of PHI, Business Associate agrees to:
 - 1.1. Not use or further disclose PHI unless required by law as defined in 45 CFR 164.501.
 - 1.2. Use appropriate safeguards to prevent unauthorized use or disclosure of PHI.
 - 1.3. Report to Customer any use or disclosure of PHI of which Business Associate becomes aware and to document disclosures of PHI and information related to such disclosures in accordance with 45 CFR 164.528.
 - 1.4. Ensure that any agent, including a subcontractor, to whom Business Associate provides access to PHI agrees to the same restrictions and conditions that apply to Business Associate through this Agreement.
 - 1.5. Provide total, unfettered access to all PHI in Business Associate’s control to Customer in order to meet the requirements under 45 CFR 164.524.
 - 1.6. Make Business Associate’s policies and procedures and records relating to the protection of PHI available to Customer, or to the Secretary of the U.S. Department of Health and Human Services, to allow the Secretary to assess Business Associate's compliance with HIPAA. Customer shall immediately notify Business Associate upon receipt of any such request, and shall provide Business Associate with copies of the request.
 - 1.7. Upon termination or expiration of the business relationship between Business Associate and Customer, Business Associate will return or destroy all PHI received from Customer, and retain no copies of PHI in any form whatsoever.
2. Permitted Disclosures by Customer
 - 2.1. Business Associate may not use or disclose PHI other than to provide backup or disaster recovery or as required to carry out its responsibilities under the business contract between Business Associate and Customer or to meet its legal responsibilities provided



however that such PHI may be disclosed for such purposes only if the disclosures are required by law. Business Associate shall make reasonable efforts to limit use of PHI to the minimum necessary to accomplish these tasks. Customer shall not request that Business Associate use or disclose PHI in any manner that would violate HIPAA.

3. "Permitted Uses and Disclosures of Protected Health Information.
 - 3.1. Services. (a) Business Associate provides services that involve the use and/or disclosure of Protected Health Information. These services are provided to Customer under support agreements that specify the services to be provided by Business Associate. Except as otherwise specified herein, the Business Associate may make any and all uses and disclosures of Protected Health Information created or received from or on behalf of Customer necessary to perform its obligations under the Service Agreements.
 - 3.2. (b) Business Associate may perform Data Aggregation for the Health Care Operations of Customer.
 - 3.3. Public Health Activities. Business Associate may use, analyze, and disclose the Protected Health Information in its possession for the public health activities and purposes set forth at 45 CFR 164.512(b).
 - 3.4. Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may (a) consistent with 45 CFR 164.504(e)(4), use and disclose the Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate; and
 - 3.5. (b) de-identify any and all Protected Health Information in accordance with 45 CFR 164.514(b). Customer acknowledges and agrees that de-identified information is not Protected Health Information and that Business Associate may use such de-identified information for any lawful purpose."
4. Miscellaneous
 - 4.1. Survival. The respective rights and obligations of Business Associate under this Agreement shall survive the termination of the Agreement.
 - 4.2. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA.
 - 4.3. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.



IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by their duly-authorized officers:

(“BUSINESS ASSOCIATE”)

(“CUSTOMER”)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____