



CLLOUD HOSTING AGREEMENT

This **Cloud Hosting Agreement** is a legal contract between AZCOMP Technologies, an Arizona corporation with offices located at 2500 S. Power Rd., Suite 117, Mesa, Arizona 85209 ("**AZCOMP**"), and the entity who is entering this Agreement by electronically accepting and signing the sales quote upon which the entity and its authorized representative are named ("**CLIENT**"). This Cloud Hosting Agreement, as well as any Signed Quotes/Sales Orders, any applicable Business Associate Agreement, Exhibits and/or Attachments thereto, shall be collectively referred to herein as "**Agreement**". Under this Agreement, AZCOMP will host Software in the cloud and provide related services ("**Services**") for CLIENT.

Purpose of this Agreement:

This agreement sets forth the terms and conditions under which AZCOMP agrees to provide CLIENT with Cloud Hosting Services.

I. Cloud Hosting Services

- A. AZCOMP will provide hosting on a secure server with an Internet address for storage and access of Data, User Data, and the Software. The Data, and User Data must be "server-ready." If CLIENT requires additional bandwidth or storage, AZCOMP will negotiate in good faith to accommodate such requests unless AZCOMP's data center cannot accommodate the requested bandwidth or storage.

****NOTE: For instances where AZCOMP is providing a dedicated server, changes to resources (CPUs, Memory, Disk Space, RDP Users, Bandwidth, etc.) will incur an increase to monthly fees. Any changes to resources are based upon CLIENT request and/or prior approval. Upon request, AZCOMP will provide to CLIENT a quote that details the changes and provides new monthly pricing, which must be signed by CLIENT, and returned to AZCOMP prior to changes to resources being implemented. Fees are calculated based upon current vendor rates.****

- B. AZCOMP shall provide software hosting services as detailed on the signed quote/sales order associated with this agreement. Only approved software items, agreed upon with AZCOMP's written consent, are to be installed and hosted on AZCOMP servers. Connection to CLIENT's data shall be provided via Remote Desktop Protocol (RDP) connections.

II. Software Data Storage, Replication and Backup

- A. AZCOMP will exercise commercially reasonable care over CLIENT's electronic data that is stored in Designated Data Repositories in the data centers and media storage facilities.
 - i. Designated Data Repositories are the Servers and Storage that are designed to contain CLIENT's owned, primary electronic data. CLIENT's electronic data is generally information owned by CLIENT that has value, such as structured data (software databases) and unstructured data (documents such as Word, Excel, etc.).
 - 1. CLIENT application files and operating system files, commonly known as System Data, are not stored in Designated Data Repositories.

2. Microsoft Active Directory servers and presentation servers (such as Remote Desktop Services, Citrix) are not stored in Designated Data Repositories.
 3. CLIENT electronic data that are a copy of the primary data, such as replication and/or reporting servers, are not stored in Designated Data Repositories.
 - ii. AZCOMP utilizes commercially available enterprise data protection techniques within its data centers. The success rate of creating a restore point (e.g., a backup) is dependent on many variables, including some outside to AZCOMP's control (including, but not limited to, backup software error rates, backup media (disk and/or tape) failure rates, CLIENT use variability, etc.). AZCOMP designs its' restore point architecture to provide a minimum average success rate comparable with industry norms. A data backup that does not report any errors may still contain inconsistent data (data which is in use at the time of the backup). In addition, AZCOMP is not responsible for, or in control of, the Data or User Data entered into, modified, or removed from the Software. Backups are intended for disaster recovery, not the restoration of individual files.
- B. Within these Designated Data Repositories, AZCOMP will provide the following restore points with the following specifications and retention levels.
 - i. **6-Hour Restore Point:** AZCOMP will capture a restore point every 6 hours and retain 4 of these 6-Hour restore points (covering a 24-hour span). These restore points are contained within the same data center, and on the same hardware, as the Designated Data Repositories.
 - ii. **Daily Restore Point:** AZCOMP will capture a restore point once a day and retain 21 daily restore points (covering a 3-week span). These restore points are contained within the same data center as the Designated Data Repositories on separate hardware from the Designated Data Repositories.
 - iii. **Monthly Restore Points:** AZCOMP will capture a restore point once a month and retain 12 monthly restore points (covering a span of 1 year). These restore points are contained in facilities separate from the data center that contains the CLIENT's Designated Data Repositories.
- C. A recovery point may satisfy more than one service level (e.g., a monthly restore point may also represent an annual restore point).
- D. For dedicated servers, AZCOMP is not responsible for backup failures resulting from CLIENT software exceeding the server and storage system resources designated to the CLIENT. AZCOMP may provide performance metric data to CLIENT and make recommendations necessary to facilitate sound resource allocation choices by CLIENT. CLIENT is responsible for server and storage choices affecting the Designated Storage Repositories and for ensuring enough resources are contracted to satisfy the performance needs and the backup processing needs of those repositories.
- E. AZCOMP is not responsible for backup failures resulting from unauthorized changes performed by CLIENT or third parties.
- F. CLIENT is responsible to notify AZCOMP of the need to recover data from a restore point. CLIENT may incur labor expenses to perform the recovery and material costs necessary to recover the data or retain the recovered data beyond the specified retention levels described herein.
 - i. Data no more than 21 days old shall be considered operational in nature, and the restoration of data from these restore points is within the scope of this agreement.

- ii. Any meta-data or data older than 21 days (and thus part of older restore points) shall be considered “archival” data, and restoration thereof shall be considered a billable event payable by CLIENT.

III. Availability of Services

- A. AZCOMP shall track the cumulative minutes of Service Disruptions which are under AZCOMP’s direct control (“Unavailability”). Items or events beyond AZCOMP’s control and which are under CLIENT’s or third parties (such as vendors) control, include, but are not limited to, telecom and internet communications equipment and network pathways used to connect to the Services, PCs, firewalls, and any other CLIENT equipment (“CLIENT Equipment”), which render CLIENT unable to access or use the Services are not AZCOMP’s responsibility and the resulting time CLIENT is unable to access or use the Services shall not be deemed Unavailability. Any Version Update installation, Service Pack Update installation, Maintenance Window, or Emergency Maintenance Window pursuant to this Agreement shall not be deemed Unavailability. “Availability” is defined as any period of time where the Services can be accessed by CLIENT’s staff.
- B. AZCOMP shall maintain an (“Availability Standard”) of 99.95% per calendar month as calculated by the following formula: Total number of minutes in a given calendar month minus any Version Update Installation(s), Service Pack Installation(s), Maintenance Windows, or Emergency Maintenance Windows minus the total number of minutes in a given calendar month where the Services were not available due to a Disaster, Service Disruption or other unplanned event not specifically defined herein and this result divided by the total number of minutes in a given month minus any planned Version Update Installation(s), Service Pack Installation(s), Maintenance Windows, or Emergency Maintenance Windows.
- C. Should the Availability as computed above fall below 99.95% for any given calendar month, and at the CLIENT’s request, AZCOMP shall pro-rate CLIENT’s Services invoice for that month by the percentage of actual Availability as compared to the 99.95% Availability Standard.

IV. Data Center Specifications

- A. AZCOMP firewalls, network equipment, and servers operate in one or more discrete data centers with redundant power, networking, and connectivity. This gives AZCOMP the ability to operate production applications and databases that are more highly available, fault-tolerant, and scalable than would be possible from a single data center. All traffic between data centers and CLIENT connections is encrypted. AZCOMP may move firewalls, network equipment, and servers to different geographic areas as needed. The data centers where firewalls, network equipment, and servers are located meet the highest levels of security, compliance, and data protection. Services provided by AZCOMP may be run in a shared server environment or CLIENT may request a dedicated server. AZCOMP works with major cloud providers such as Amazon Web Services (AWS) and Microsoft Azure. AZCOMP reserves the right to work with any cloud provider to run CLIENT production applications. AZCOMP will operate in a shared tenancy with these cloud providers where AZCOMP firewalls, network equipment, and servers may reside on the same physical hardware with other customers of the cloud provider. Within this shared tenancy, AZCOMP servers will be logically isolated into their own virtual network. Dedicated servers have dedicated production applications to CLIENT but will still operate on shared tenancy (shared hardware) with the cloud provider.

V. Security

AZCOMP shall use commercially accepted security practices and measures suitable for the protection of ePHI in AZCOMP's data centers. AZCOMP's security is designed to protect against common external security threats such as viruses, malware, and ransomware. It is also designed to protect against more sophisticated security threats, and adhere to federal laws and guidelines.

B. **ePHI Security** - AZCOMP shall provide the following:

- i. **Data Encryption in Transmission** - All data will be encrypted by SSL or an IPSEC VPN while in transmission over public network lines.
- ii. **Auto Log Off** - A session time limit on all user accounts.
- iii. **Password Policy**: Default password expiration, complexity, minimum length, and history will comply with current accepted industry best practices.
- iv. **Virus Protection** - Antivirus software is installed on all servers and centrally managed. Virus definitions are kept up-to-date and reports are generated and reviewed regularly.
- v. **Application Whitelisting** – Application whitelisting policies are established on all servers. This prevents the execution of malicious software by allowing only approved software to run.
- vi. **Firewall** - All internet connections are inspected by an enterprise-grade firewall.
- vii. **Data Encryption in Backup** - All backups are encrypted.
- viii. **Centralized Log Gathering** - Server security logs are centrally collected and reviewed for system activity.
- ix. **IDS** - A network Intrusion Detection System is installed and monitored daily by AZCOMP's IDS vendor and/or AZCOMP staff.
- x. **IP Address Whitelisting and/or Multi-Factor Authentication** – AZCOMP will protect servers and customer data with IP address whitelisting and/or multi-factor authentication.

- C. **Release of CLIENT Data.** Only the individual(s) undersigned as the CLIENT on this Agreement shall have the right to request and receive any release of CLIENT data from AZCOMP. The named individual(s) may provide, in writing to AZCOMP, an alternate contact person or persons authorized to request and receive any release of CLIENT data. CLIENT assumes all responsibility for updating and changing this authorization as necessary.

VI. Updates and Enhancements

- A. AZCOMP may periodically upgrade, enhance, or otherwise modify the Services to improve operations and/or add new functionality ("Version Update"). All Version Update installations shall be performed by AZCOMP during the published "Maintenance Window" [See Section VII.C. below] to minimize operational impact to CLIENT.

- B. AZCOMP may periodically create and apply software corrections to the Services where the corrections do not introduce any new feature, functionality, or capability of the Services (“Service Pack Update”). All Service Pack Update installations shall be performed by AZCOMP to minimize operational impact to CLIENT.
- C. AZCOMP may periodically upgrade the operating system (“Operating System Update”) used within the Services and accessed by CLIENT. All Operating System Update installations shall be performed by AZCOMP to minimize operational impact to CLIENT.
- D. CLIENT acknowledges that when AZCOMP performs Updates and Enhancements, CLIENT’s personnel shall have no ability to access the Services during the installation period.

VII. Disaster Recovery, Service Disruption, Maintenance Outages and Services Monitoring

- A. A “Disaster” is any unplanned event or condition that renders AZCOMP personnel unable to access its physical location, data centers, or equipment processing the Services or deliver the Services. In the event of a Disaster, AZCOMP shall notify CLIENT via written e-mail immediately upon being made aware of the Disaster. AZCOMP shall make best efforts to relocate the Services data center at a Services recovery center and enable the Services.
- B. A “Service Disruption” is any unplanned event or condition that renders data center assets under AZCOMP’s direct control, including, but not limited to, the Application servers, Microsoft Terminal Server servers, Web Application servers, Internet access points, or third-party operating systems or software, unable to perform where CLIENT’s staff cannot access the Services for a continuous fifteen (15) minute period. In the event of a Service Disruption, AZCOMP shall use commercially reasonable practices to restore the Services and attempt to recover any CLIENT data from the point of Service Disruption.
- C. Maintenance Window(s): AZCOMP shall have the right to temporarily terminate access to the Service for the purpose of performing maintenance of the Services infrastructure and equipment (“Maintenance Windows”). The Maintenance Windows will be utilized to perform maintenance items including, but not limited to, service pack installations and/or program patches or fixes for any third-party software, or to repair, maintain, fix, upgrade, or replace any third-party software, or any computer or communication equipment, or data or Internet connections.
 - i. **Weekly Maintenance Window:** Services shall be subject to a Weekly Maintenance Window each Tuesday evening, starting at 8:00 PM CST and ending on Wednesday at 5:00 AM CST. Services will not always be disrupted during each Maintenance Window. CLIENT may request an alternate time for their Maintenance Window.
 - ii. **Infrastructure Maintenance Window:** Maintenance on infrastructure devices will be scheduled for Friday evenings at 8:00 PM CST and not to exceed 1:00 AM CST. Infrastructure items include those things that are core to the operations of the data center and generally affect all CLIENTS. Some examples include the storage area network (SAN), Uninterruptable Power Supplies (UPS), backup power generator tests, and updates to core network routers. Services will not typically be interrupted during this Maintenance Window.

- iii. **Extended Maintenance Window** (as needed, to be scheduled by AZCOMP and CLIENT): When AZCOMP requires additional time for maintenances or installations to maintain the Services, AZCOMP shall provide written email notification to CLIENT explaining the nature and expected duration for the Extended Maintenance Window. Upon receipt of said notice, CLIENT may, within two business days from the date of the email notice, request an alternate time for their Extended Maintenance Window. A reminder notice will be sent in advance of the Extended Maintenance Window.
 - iv. **Emergency Maintenance Window:** An “Emergency Maintenance Window” is an unplanned event whereby AZCOMP, in its best professional judgment, believes that a virus, third party software defect, or other issue which is deemed a critical problem by AZCOMP or other key security vendor and poses a real and critical threat to CLIENT’s data or data integrity or reliability and stability of the Services. In the event of an Emergency Maintenance Window, AZCOMP shall have the right to temporarily terminate access to the Services without notice. However, upon temporary termination of Services due to an Emergency Maintenance Window, AZCOMP shall provide written e-mail notification to CLIENT explaining the nature, expected duration, and planned cure for the Emergency Maintenance Window.
- D. **Services Monitoring:** AZCOMP shall use reasonable commercial efforts to monitor the Services and to ensure continuous connectivity, availability, and operation of the Services to the CLIENT. Examples of such network monitoring and tuning systems that may be used are probes, agents, thresholds, alarms, capacity tracking, and remote desktop shadowing.

VIII. Support Services

- A. AZCOMP shall maintain support staff available for the purposes of assisting CLIENT with issues arising out of the use of the Services (“Support Services”).
- i. This support staff shall be available to CLIENT via phone, email, and Client Support Portal, from 8:00 AM – 5:00 PM MST Monday – Friday except on Holidays (“Support Hours”). For support outside of Support Hours, see Subsection (c) below.
 - ii. Electronic service requests received through the portal outside of Support Hours will be logged, however, no action is guaranteed until the next working day. For urgent support outside of Support Hours, see Subsection (VIII.C.i.) below.
- B. As part of Support Services, AZCOMP will provide software and hardware maintenance (“Routine Maintenance”). Additional work, unless brought upon by system failure or error or software upgrades or enhancements, will be charged to the CLIENT in accordance with AZCOMP’s then-current Service Fee Schedule and expense reimbursement policies. Routine Maintenance shall include, but not be limited to the following:
- i. Updates and Enhancements as defined in Section VI above.
 - ii. Security adds/changes/deletes within the Operating System.
 - iii. Changes to RAM, processor resources, disk resources, or any other infrastructure component

- iv. Changes, updates, or other modifications to AZCOMP-provided software or operating systems to enhance uptime, correct performance, improve functionality, or address other operational needs.
- C. AZCOMP shall provide commercially reasonable communication methods (customer portal, email, etc.) during Support Hours to CLIENT in the use of the Services and commercially reasonable efforts as the technical contact for CLIENT third-party software vendors in solving problems that arise in connection with CLIENT's proper and authorized use of the Services or in correcting failures of the Services to perform. CLIENT shall provide to AZCOMP a reasonably detailed explanation, with access to the underlying data as necessary, to substantiate any such problem or failure and to assist AZCOMP in its efforts to diagnose and correct the problem or failure.
- i. AZCOMP shall provide CLIENTs with reasonable access to an afterhours support paging system ("Afterhours Support"), by which CLIENTs can request support only for emergency, system down situations. When a System is down AZCOMP will provide after-hours support between the hours of 5am-9pm MST M-F, and between 8am-9pm MST Saturday and Sunday, within a two (2) hour response time as measured from the time the CLIENT initiates the paging system.
 - ii. AZCOMP shall provide CLIENTs with access to an Internet-based trouble-ticketing including the ability to monitor updates on the ticket.
- D. In the event CLIENT's support issue or question requires AZCOMP personnel to access or in any way manipulate CLIENT's data, by virtue of seeking AZCOMP's assistance with the support issue, CLIENT is providing de-facto agreement to allow AZCOMP staff to take measures to assess, fix, or in any way remedy the support issue on behalf of CLIENT. CLIENT acknowledges that AZCOMP is not responsible for any errors that may occur in the process of attempting to solve CLIENT's support issue or question. Furthermore, CLIENT acknowledges and agrees that AZCOMP shall have the right to access the Services equipment, programs, software, and CLIENT's data in the general course of maintaining the Services to ensure ongoing reliable access to the Services. In all instances, AZCOMP shall use commercially reasonable practices to maintain CLIENT's data integrity and keep CLIENT data confidential.
- E. Notwithstanding the above, if AZCOMP determines that the Support Services requested by CLIENT pursuant to this Agreement will entail detailed, specialized maintenance or support services different in kind or amount from those provided to other similar CLIENTs of the Services, AZCOMP shall notify CLIENT that the requested support is considered an additional service which shall be subject to additional fees, to be negotiated.
- F. AZCOMP SPECIFICALLY DENIES PROVISIONING OF ANY THIRD-PARTY SOFTWARE APPLICATION TECHNICAL SUPPORT UNDER THIS AGREEMENT. CLIENT inquiries with respect to the use of application software shall: a) be required to have a support contract with AZCOMP specific to the software application, or b) be directed to the manufacturer. AZCOMP will not provide Support Services for any software that it did not install.
- G. **Incident Priority Levels:** A technical support representative will be available to communicate (phone, email, ticket updates, etc.) to CLIENT during support hours. Responses are prioritized according to the level of urgency assigned to a ticket as deemed by AZCOMP (Four levels of urgency include Emergency, Urgent, Normal, and Planned). All support tickets, regardless of the method used to initiate the ticket (phone, email, or through the support portal), receive equal treatment in the queue and will be responded to in order of level of urgency first, followed by the time the ticket was created second. Response times are not guaranteed as they are subject to variations due to downtime for systems and

server maintenance, company meetings and events, observed U.S. holidays, and events beyond our control. The foregoing shall not be deemed a representation of warranty on AZCOMP's behalf regarding the time within which a resolution, if any, may be available for any particular incident.

Priority Level	Description	Initial Response Time (Maximum)
Emergency	Mission critical Affects many users (Site Down, User Disable).	2 business hours
Urgent	Limited scope (at least one user), no workaround.	4 business hours
Normal	User, workaround available. (Permission Changes, Billing Changes)	8 business hours

IX. CLIENT Responsibilities

- A. Data and Other Media: CLIENT is responsible for the condition of all data and other media it supplies. AZCOMP shall not be considered in breach of this Agreement if CLIENT's data or media cannot be processed due to its condition. CLIENT agrees to pay for the resources used in the partial processing of any CLIENT's work if the failure to complete the processing is due to the condition of CLIENT's data or media.
- B. Authorized Users of Services: CLIENT agrees that it shall not permit access to the Services by or for any person or entity except:
 - i. Employees of CLIENT whose responsibilities to CLIENT require use of the Services.
 - ii. Third-Party Service Providers of CLIENT whose responsibilities to the CLIENT require use of the Services.
 - iii. CLIENT is prohibited from using or providing access to the Services to create or offer a service bureau to any third party other than CLIENT.
- C. CLIENT Internet Services:
 - i. Standard Internet Connection Required. CLIENT acknowledges and agrees it is solely responsible to establish, maintain, and pay for any related fees for an Internet connection that is required to access Cloud Hosting Services and CLIENT is responsible for the security, reliability, and integrity of this connection.
 - ii. It is CLIENT's responsibility to make timely payment to the Internet Services Provider to ensure uninterrupted access to the Services. If the Internet Service is interrupted for any reason at the CLIENT's side, CLIENT acknowledges and agrees that AZCOMP is not responsible for this interruption or for any downtime and said interruption is not deemed Unavailability as defined in Section III.A, nor shall this interruption reduce Availability Standard as defined in Section III.B.

- iii. The Internet Service Charges are subject to change at the discretion of those independent third parties and are beyond the control of AZCOMP. It is not the responsibility of AZCOMP to provide a notice of Internet Service fee change.

D. CLIENT Access Requirements:

- i. It is the CLIENT's responsibility to obtain a static IP address from their Internet Service Provider for all office locations. If a static IP address is not obtainable through CLIENT's Internet Service Provider, AZCOMP will provide a whitelist exception for the CLIENT's dynamic IP address. CLIENT understands that when either a static or dynamic IP address changes, a temporary disruption in service will occur until the CLIENT creates a service ticket and provides AZCOMP with the new IP address. This does not constitute an emergency priority as defined in section H above. CLIENT acknowledges and agrees that AZCOMP is not responsible for this interruption or for any downtime and said interruption is not deemed Unavailability as defined in Section III.A, nor shall this interruption reduce Availability Standard as defined in Section III.B.
- ii. CLIENT understands and acknowledges that any users connecting to the services outside of the whitelisted office locations will require Multi-Factor Authentication (MFA). AZCOMP will provide the MFA service. MFA requires that CLIENT users will be required to use either a smartphone app, a telephone number, or other authorized MFA device as is commercially reasonable.

E. CLIENT Security Requirements:

- i. It is the CLIENT's responsibility to notify AZCOMP immediately when an employee or user with access to the system is no longer employed by the client or no longer requires access to the services.
- ii. CLIENT acknowledges that any user account that has not shown activity in 60 days prior from the last login date will be automatically disabled. The account can be re-enabled by creating a service ticket.
- iii. Only the individual(s) undersigned as the CLIENT on this Agreement shall have the right to request the addition of new user accounts or modify existing user accounts. The named individual(s) may provide, in writing to AZCOMP, an alternate contact person or persons authorized to add, remove, or modify user accounts.
- iv. CLIENT is responsible for ensuring that any devices (computers, servers, tablets, etc.) used to access AZCOMP services are properly secured using an established security framework, such as HIPAA.

X. Disclaimers

- A. AZCOMP provides no equipment or communication connections to CLIENT. AZCOMP makes no representations, warranties, or assurances that the CLIENT's equipment or communication connections will be compatible with AZCOMP's software and service.

XI. Ownership of Data

- A. All Data and User Data stored by CLIENT on AZCOMP's servers shall at all times remain the property of CLIENT. CLIENT grants to AZCOMP a non-exclusive, worldwide license to the Data and User Data only to the extent necessary for AZCOMP to host and support the hosting of the Software.

XII. Data Control

- A. **Lawful Purpose.** CLIENT will only use AZCOMP's software and services for lawful purposes and CLIENT will not store or provide any Data or User Data or link to any material that violates foreign, federal, state or local law, and any modifications thereof.
- B. **Remedy for Violation.** Should AZCOMP become aware that CLIENT has violated Section XII.A., AZCOMP may, at its option, remove the Data or User Data in violation, immediately terminate hosting CLIENT's Software, and/or notify authorities. If hosting is terminated, AZCOMP may, in its sole discretion, reinstate hosting upon adequate showing of CLIENT's right to use the Data or User Data.

XIII. Payments

- A. **Payment Terms:** Recurring monthly fee will be due on the first day of each month, starting on the Commencement Date, and will be paid by automatic withdrawal from the account specified by CLIENT. New services added during the Term will be billed commencing with the first of the month after AZCOMP accepts the change.
- B. **Commencement Date:** The commencement date will be the date CLIENT signs the associated quote/sales order.
- C. **Fees and Charges:** CLIENT shall pay fees agreed upon in the accepted quote/sales order associated to this agreement. If any debit or charge to CLIENT's account is refused or denied for, among other reasons, insufficient funds, or the expiration, or closing of such account, CLIENT agrees to pay a service charge of \$25 per incident.
- D. **Certain Remedies for Nonpayment:** If CLIENT fails to pay to AZCOMP, within ten (10) days after AZCOMP makes written demand therefore, any past-due amount payable under this Agreement (including interest thereon) that is not the subject of a Good Faith Dispute as to which CLIENT has given written notice to AZCOMP explaining its position in reasonable detail, then, in addition to all other rights and remedies which AZCOMP may have at law or in equity, AZCOMP may, in its sole discretion provide CLIENT with a forty-eight (48) hour e-mail notice of payment required. If CLIENT should fail to respond to this notice of payment required with an acceptable manner of payment, AZCOMP shall have the right to suspend CLIENT's access to all Software and Services (including e-prescribing if applicable) provided under this Agreement until all undisputed past due amounts are paid in full. Additionally, upon initial e-mail notice of payment required, AZCOMP shall have the right to place a Service Hold for support on CLIENT's account. Suspended accounts will automatically be terminated if payment in full is not received within fifteen (15) days of the account being suspended. Any withholding of Services or support due to an undisputed failure by CLIENT to pay does not relieve CLIENT from its obligation to pay for the Services during the time the Services and/or support are withheld. CLIENT agrees to reimburse AZCOMP for all

costs and expenses, including but not limited to reasonable attorney's fees and all costs and fees of collection, incurred in enforcing AZCOMP's rights of remedies.

- E. **Account Updates:** It is the responsibility of the CLIENT to maintain accurate billing information with AZCOMP, this may include updated credit card information, email address, and mailing address.
- F. **Taxes:** CLIENT is solely liable for any taxes or fees payable for products or services purchased by CLIENT under this agreement.
- G. **Underlying third-party licenses:** CLIENT acknowledges that AZCOMP incorporates certain third-party licenses critical and common to the delivery of the Services, and the costs associated with these licenses are included in fees. AZCOMP reserves the right, should these licensing costs be increased by those third parties, and such increases effected upon AZCOMP prior to the expiration of the Initial Term, to increase the price by no more than the increase imposed by the third-party. Examples of third-party licenses are Microsoft operating systems, McAfee and Kaspersky AV, Citrix, VMWare, Kaseya. AZCOMP agrees to reasonably document and substantiate the software cost increases to CLIENT.
- H. **Fee Increases:** Following the Initial Term, by giving at least ninety (90) days prior written notice to CLIENT, AZCOMP may increase the fee rates payable for the Services under this Agreement on an annual basis provided that the increase in the fee rates shall not exceed 15% per year as calculated from the beginning of the immediate prior Term.

XIV. Term and Termination.

- A. **Term:** Unless otherwise specified in the associated quote/sales order, the term of this Agreement shall be for a period of one year from the commencement date. Upon the expiration of the initial Contract Period, the term of this Agreement will automatically renew for a period of 12 months and each successive 12-month period thereafter unless terminated pursuant to the following sentence: Either party hereto may terminate this Agreement by giving the other party written notice at least sixty (60) days prior to the date of expiration of the current Contract Period. CLIENT shall notify AZCOMP of cancellation in writing by completing the [Service Cancellation Request Form](#). If CLIENT does not receive written notice that cancellation has been received within forty-eight (48) hours of sending the cancellation notice, Customer is responsible for contacting AZCOMP to confirm that the cancellation notice was received.
- B. **Early Termination:** CLIENT may terminate the agreement prior to the end of the 12 Month contract term for any cause prior to the end of the then-current term by completing the [Service Cancellation Request Form](#) thirty (30) days prior to the desired termination date. In such event, upon AZCOMP's acknowledgment of the termination notice, CLIENT shall immediately pay to AZCOMP by automated withdrawal or credit card a sum equal to the Recurring Fees that would otherwise be due for the remainder of the Term, calculated from the date of the receipt of CLIENT's notice to AZCOMP plus any other amounts that would otherwise be due under the agreement. Failure to pay these fees will result in system suspension of all access to software and services (Users will be locked out of the programs and services, including e-prescribing if applicable). No refund or credit will apply in the event of early termination.
- C. **Breach:** CLIENT may terminate this Agreement upon the material breach of AZCOMP, if such material breach remains uncured for thirty (30) days following written notice to AZCOMP. This cure period shall

be extended by delay caused by events beyond the control of AZCOMP including, but not limited to, natural disasters, governmental prohibitions or regulations, viruses that did not result from the acts or omissions of AZCOMP, or technical faults of AZCOMP's service providers or vendors.

- D. **Termination by AZCOMP:** AZCOMP may immediately terminate this Agreement for cause at any time without penalty. Causes justifying immediate termination include, but are not limited to: violation of any foreign, federal, state, or local law; non-payment of fees due under this Agreement; breach of this Agreement; violation of the Terms of Service and any written modifications thereof; and violation of any other AZCOMP policy. AZCOMP may terminate this Agreement without cause at any time upon thirty (30) days written notice to CLIENT.

XV. Procedures Upon Termination

- A. Should termination occur under Section XIV, AZCOMP will cooperate and provide necessary information to effectuate an electronic transfer of CLIENT's Data from AZCOMP to another CLIENT designated IT system, or service provider, in a commercially usable format within thirty (30) days prior to the Agreement termination date at no charge.

****NOTE: Upon CLIENT written request, AZCOMP will provide a physical electronic backup copy of CLIENT Data on an external hard drive within thirty (30) days of the Agreement termination date. CLIENT shall incur a \$500.00 fee per occurrence. Fee includes encrypted external hard drive, shipping/delivery fees if applicable, and any service fees to perform the copy.****

- B. AZCOMP shall have the right to refuse CLIENT's access to any materials, data, or information until payment for all undisputed accrued charges has been made. This remedy shall be in addition to any remedies provided to AZCOMP by law.
- C. All CLIENT data and account settings are irrevocably deleted and rendered inaccessible to CLIENT, and when technically practicable, deleted from backup data stores upon account termination.

XVI. Dispute Resolution

- A. AZCOMP and CLIENT agree to a good faith effort to communicate and resolve issues of performance, payments, dispute of claims, or interpretations of this Agreement. The dispute resolution process may be initiated by either party upon written notice to the other party with sufficient detail to explain the dispute, the party's position, and the party's requested resolution. Both parties agree to work in good faith to resolve any concerns in a timely manner. No dispute shall interfere with the provision of necessary service to CLIENT.
- B. **First level dispute resolution:** The first level of dispute resolution, after written notice is provided, shall involve discussion and resolution by Account Management and front-line staff in a timely manner. If front-line staff are unable to resolve the dispute within 30 days, the matter will be moved to the second level of dispute resolution and be forwarded to individuals in each organization with full settlement authority.

- C. **Second level dispute resolution:** The second level of dispute resolution will involve verbal and written communication between CLIENT's CIO or designee and an AZCOMP Manager. If these individuals are unable to resolve the dispute within 60 days, the issues shall be forwarded to and addressed by CLIENT's CEO/President/Executive Director and AZCOMP's Executive Director and/or President.
- D. Following Second Level Dispute Resolution as provided for above, all such disputes shall be subject to binding arbitration in Arizona by one or more arbitrators selected by the parties under the Rules of the American Arbitration Association, commercial arbitration. Either party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect its rights or property, pending the arbitral tribunal's determination of the merits of the controversy. At the option of the party winning an award as a result of such arbitration, judgment on such award may be entered in any court of competent jurisdiction selected by such party. The parties agree that the court or the arbitral tribunal shall decide whether the prevailing party in an action pursued in court or an action pursued in arbitration under this section shall be reimbursed its reasonable legal fees incurred in the pursuit or defense of said court action or arbitration, or any portion thereof.

XVII. WARRANTIES

- A. AZCOMP warrants that the Services do not infringe upon any United States copyright, patent, or other proprietary right. AZCOMP will indemnify and hold CLIENT harmless against any third-party claim of such infringement by paying any damages awarded by a court of final jurisdiction, and any settlements and legal costs pre-approved in writing by AZCOMP, to the extent that the damages, settlements, and costs resulted from such infringement.
- B. The CLIENT understands that the general reliability of the private wide-area-network, network computers, servers and related systems, the Internet, and of connections to and from the Network, (collectively the "Network"), may be controlled by factors beyond the control of AZCOMP; because of this, it is impossible for AZCOMP to guaranty the provision of the Services will be uninterrupted, that the CLIENT will be able to properly access and use the Services, or that the Services will be provided without error. AZCOMP shall have no obligation to remedy any such interruptions, inabilities, or errors.
- C. AZCOMP shall not be responsible for any delays and Services unavailability of any kind, regardless of cause, except as provided in this Agreement. CLIENT expressly waives any claims against AZCOMP for loss, injury, or damage of any kind, directly or indirectly, resulting from CLIENT's use of the Services or from any defects therein, except as otherwise expressly provided in this Agreement.
- D. Except for the express warranties stated herein, AZCOMP, and its owners, employees, affiliates, agents, vendors, and the like, make no warrant in connection with software products or services furnished hereunder, whether written or oral, statutory, express or implied, including without limitation, the warranties of title, non-infringement, merchantability, and fitness for a particular purpose. These stated warranties are in lieu of all obligations or liability on the part of AZCOMP arising out of, or in conjunction with, the performance of AZCOMP hereunder.
- E. CLIENT warrants that no program or data submitted to AZCOMP violates any copyright, or patent, or infringes on any proprietary rights. CLIENT shall indemnify AZCOMP and hold AZCOMP harmless from any infringement claim and will defend any action alleging the infringement of such rights that may be brought against AZCOMP by reason of AZCOMP's having supplied support services or Services for the processing of any program or data provided by CLIENT. AZCOMP shall have the right, but not the

obligation, to refuse to supply support services or provide access to the Services for the processing of any CLIENT program or data which AZCOMP, in its sole discretion, considers to violate any copyright, patent, or other proprietary rights.

- F. Notwithstanding anything herein to the contrary, no warranties of AZCOMP regarding the Services shall be deemed included of any of the following:
 - i. Software or services provided by Third-Party Licensors or third-party vendors including, but not limited to Microsoft or CLIENT's internet service provider.
 - ii. Services provided by third-party vendors which are identified as such on the associated quote/invoice.
 - iii. Any services not provided directly by AZCOMP.
 - iv. Any equipment purchased by CLIENT.

XVIII. Limitation of Damages

- A. CLIENT's right to recover damages from AZCOMP for any reason whatsoever related to this Agreement shall not exceed the recurring charges paid by the CLIENT under this agreement for the two (2) month period immediately preceding the filing of a claim, or twenty-five thousand dollars (\$25,000), whichever is less. AZCOMP, its owners, employees, affiliates, agents, vendors, and the like shall not be liable in any event for any damages resulting from lost data, lost profits, lost business, indirect, incidental, special, or consequential damages that result from the use or inability to use software or services, even if advised of the possibility of such damage. This limitation of AZCOMP's liability will apply regardless of the form of action, whether in contract or in tort, including negligence.

XIX. Confidentiality

- A. AZCOMP acknowledges that all non-public information disclosed by CLIENT to AZCOMP for purposes of performing its obligations under this Agreement constitutes a valuable asset of, and is proprietary to CLIENT. AZCOMP also acknowledges that CLIENT has a responsibility to its employees to keep their records strictly confidential. AZCOMP shall not disclose said information or knowingly permit its employees, officers, agents, or contractors to disclose said information to any person outside of its company or to any person within its company not having a specific "need to know" in performance of their work in connection with Services provided to CLIENT hereunder. AZCOMP shall take reasonable steps to ensure fulfillment of this obligation, including instructing its employees and contractors not to sell, lease, assign, transfer, or reveal any information related to this Agreement without CLIENT's prior written consent. In the event that a subpoena or other legal process in any way concerning information disclosed by CLIENT to AZCOMP is served upon AZCOMP, AZCOMP agrees to notify CLIENT immediately upon receipt of such subpoena or other legal process unless otherwise provided by law and to cooperate with CLIENT, at CLIENT's expense, in any lawful effort by CLIENT to contest the legal validity of such subpoena or other legal process; provided nothing herein shall be interpreted to mean that AZCOMP will not comply with any lawful requirement of any federal or state court or agency with respect to disclosure of confidential information of CLIENT. In addition, this provision will in no way limit AZCOMP's ability to satisfy any governmentally required disclosure of its relationship with, or

confidential information of CLIENT. The data or information held by AZCOMP will be made available for inspection by CLIENT's supervisory authorities, or, if authorized by CLIENT in writing, another designated person. AZCOMP's obligations under this Section, XIX.A, are subject to and limited by the provision in Section XV.C allowing AZCOMP to dispose of materials and/or information of CLIENT upon account termination, which provision shall supersede this Section XIX.A in the event of a conflict or inconsistency.

XX. General Provisions

- A. **Force Majeure:** Neither AZCOMP nor CLIENT shall be liable for, nor shall AZCOMP or CLIENT be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, labor problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by AZCOMP or CLIENT with reasonable care. However, such event shall not eliminate CLIENT's responsibility to make payment for the Services used.
- B. **Non-Recruitment:** Neither CLIENT nor AZCOMP will recruit for employment those employees of the other whom it met, or to whom it was introduced, through or because of Services provided during the term of this Agreement and for two years thereafter.
- C. **Entire Understanding:** This Agreement (including the associated quote/invoice and attached Exhibits) states the entire understanding between the parties with respect to its subject matter, and supersedes all prior written and/or verbal proposals, negotiations, and any other written or verbal communications between the parties with respect to the subject matter of this Agreement. No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement. This Agreement terminates and supersedes all previous License Agreements and other Agreements between AZCOMP and CLIENT relative to the use of the Services. No representation or statement which is not expressly contained in this Agreement shall be binding upon AZCOMP as a warranty or otherwise.
- D. **Relationship of Parties:** No agency, partnership, joint venture, or employment relationship is created by this Agreement and neither party has the power to bind the other party.
- E. **Parties of Interest:** AZCOMP shall have the right to assign or delegate all or part of its rights, responsibilities, or duties hereunder to any parent, subsidiary of its parent, affiliate or successor to substantially all of its assets and/or business upon the provision of prior written notice to CLIENT. AZCOMP may subcontract all or a part of the work to be performed under this Agreement to a subcontractor of its choice. This Agreement shall bind, benefit and be enforceable by and against both parties and their respective successors and consented-to assigns. No third-party shall be considered a beneficiary of this Agreement or entitled to any rights under this Agreement.
- F. **Assignment:** Except as provided in Section XX.E above, neither party may assign nor otherwise dispose of its duties or obligations hereunder taken, without the express written consent of the other party, except that such assignment or disposition may be made to a successor or parent entity, or a wholly-

owned subsidiary, in which event no such written consent shall be required, but the other party hereto shall be promptly notified thereof in writing. In any case where AZCOMP reasonably believes an assignment to a third-party will result in the potential access of the Services and/or any proprietary information, systems, technology, or intellectual property by a known or emerging competitor of AZCOMP, AZCOMP shall have the right to deny such an assignment and if such assignment has already occurred, AZCOMP shall have the right to immediately terminate this Agreement without notice per the terms hereunder.

- G. **Construction:** This Agreement is made under, and will be construed and enforced in accordance with the laws of the State of Arizona applicable to agreements executed and to be performed entirely therein (without giving effect to principles of conflicts of law). A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement. The relationship between the parties created by this Agreement is that of independent contractors, and not partners, joint ventures, or agents.
- H. **Jurisdiction and Process:** In any action relating to this Agreement, (a) each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in the State of Arizona, (b) each of the parties irrevocably waives the right to trial by jury, (c) each of the parties irrevocably consents to service of process by first-class certified mail, return receipt requested, postage prepaid, to the addresses above.
- I. **Attorney's Fees and Costs:** In the event that any legal action becomes necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled, in addition to its court costs, to such reasonable attorneys' fees, expert witness fees, and legal expenses as may be fixed by a court of competent jurisdiction.
- J. **Updates or Changes to These Terms:** AZCOMP may change these Terms at any time, and will notify CLIENT in writing when modifications are made. Using the Services after the changes become effective means CLIENT agrees to the new terms. If CLIENT does not agree to the new terms, CLIENT can terminate agreement in accordance with section XIV.B above.
- K. **Business Associate Agreement:** CLIENT understands that AZCOMP will keep Customer's data, to which it has access during problem resolution, secure and confidential in accordance with AZCOMP's obligations under the Health Insurance Portability & Accountability Act. By accepting this Agreement, the parties agree to comply with the terms and conditions of the associated Business Associate Agreement. The URL to the Business Associate Agreement can be found on the associated quote/sales order.

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