

COUNTERPART ASSISTANT INSTITUTIONAL END USER AGREEMENT FOR COUNTERPART HIGH-PERFORMING NETWORK MEMBERS

This Counterpart Assistant Institutional End User Agreement for Counterpart High-Performing Network Members (the “**Agreement**”) is made between Counterpart High-Performing Network, LLC (“**CHPN**”) and Institutional End User, as that term is defined in the applicable Counterpart High-Performing Network Participation Agreement (“**Participation Agreement**”), is made effective as of the Effective Date set forth in such Participation Agreement, and shall govern use of the Subscription Services (defined below) by Institutional End User and its Authorized Users (defined below).

1. Access and Use. Subject to the terms and conditions of this Agreement, CHPN, on behalf of itself and its affiliates, hereby grants to Institutional End User (and its Authorized Users) a non-exclusive, limited, royalty-free, fully paid up right to access and use Counterpart Assistant (the “**Subscription Service**”) and applicable user guides and technical documentation relating to the Subscription Service (“**Documentation**”), as made available to Institutional End User for its internal business purposes during the Term. “**Authorized Users**” means any individual employed or contracted by Institutional End User who is authorized by Institutional End User to use the Subscription Service as a clinician providing treatment to patients of the Institutional End User, or as a staff member supporting such clinicians, pursuant to the terms of this Agreement. Each Authorized User must be so affiliated with Institutional End User, except that for Institutional End Users that are sole proprietorships, the Institutional End User may itself be an Authorized User. CHPN may make changes to the Subscription Service or Documentation from time to time. CHPN makes no warranties and assumes no liability for Institutional End User’s or any Authorized Users’ use of third-party materials contained in or used as part of the Subscription Service. Institutional End User shall operate in good repair all systems and networks required to access and use the CHPN IP (defined below). CHPN may suspend access to the CHPN IP (or the Subscription Service), in its sole discretion, for any reason.
2. Authorized Users. Institutional End User shall be responsible for all acts or omissions of the Authorized Users, and any other use of the Subscription Service under any Authorized User’s account, whether or not such use is authorized or unauthorized by Institutional End User. Institutional End User shall require, and take reasonable steps to ensure that, each Authorized User safeguards such Authorized User’s user name and password, and does not allow others to access or use the Subscription Service under the Authorized User’s account. Authorized User shall also ensure that no individual or entity that is not an Authorized User accesses the Subscription Service. Institutional End User agrees to immediately notify CHPN in the event that it or any Authorized User loses any Authorized User’s password, or if Institutional End User otherwise becomes aware of any unauthorized use of an Authorized User’s account. CHPN reserves the right to reject or revoke access rights to Authorized Users for any reason.
3. Use Restrictions. Institutional End User shall not, and shall require and take reasonable steps to ensure Authorized Users shall not, and shall not permit any third party to: (a) copy, modify, or create derivative works or improvements of the CHPN IP (as defined below); (b) rent, lease, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any of the CHPN IP to any third party; (c) remove, circumvent, disable, damage, or otherwise interfere with any: (1) security related features in the CHPN IP; (2) features of the CHPN IP that prevent or restrict use or copying of any content accessible through the Subscription Service; or (3) features of the CHPN IP that enforce limitations on use of the CHPN IP; (d) interfere with or damage operation of the CHPN IP, or any other users’ enjoyment of them, by any means, including submitting any materials that are unlawful or contain any viruses or other malware; (e) attempt to gain unauthorized access to the CHPN IP, other accounts, computer systems or networks connected to the CHPN IP; (f) use any robot, spider, scraper,

or other automated means to access the CHPN IP for any purpose, or bypass any robot exclusion headers or other measures which may be used to prevent or restrict access to the CHPN IP, or modify the CHPN IP in any manner or form; (g) reverse engineer, disassemble, decompile, adapt, or otherwise attempt to derive or gain access to the source code of any of the CHPN IP; (h) remove, delete, alter, or obscure any trademarks or other markings from the CHPN IP; (i) access or use the CHPN IP to develop a competing service or product; or (j) otherwise access or use the CHPN IP beyond the scope of this Agreement. If Institutional End User becomes aware of any actual or threatened activity prohibited by this Agreement, Institutional End User shall immediately notify CHPN and immediately take all measures necessary to stop such activity.

4. Institutional End User Obligations & Indemnity. Institutional End User is solely responsible for the accuracy, legality and quality of all materials, data and information provided to CHPN under this Agreement, the Participation Agreement and/or through the Subscription Service (including information, such as, but not limited to, Protected Health Information (“**PHI**,” as defined by the Health Insurance Portability and Accountability Act of 1996, as amended, and the applicable regulations adopted by the United States Department of Health & Human Services thereunder (“**HIPAA**”)), inputted into the Subscription Service by Institutional End User, any Authorized User, or through any Authorized User account (the “**Institutional End User Materials**”), and Institutional End User represents and warrants that Institutional End User has the necessary rights and has obtained the necessary consents to use and provide the Institutional End User Materials, including all PHI, so that CHPN’s use of the Institutional End User Materials will not infringe or misappropriate any third-party Intellectual Property Rights, or violate any applicable law or regulation. Without limiting the foregoing, Institutional End User represents and warrants that it has obtained all necessary permissions to permit CHPN to integrate the Subscription Service with Institutional User’s applicable EHR platform and/or other Institutional End User systems. Institutional End User hereby grants to CHPN and its affiliates a non-exclusive, royalty-free, fully paid up, worldwide, sublicensable (as required by CHPN for third-party contractors, solely for the benefit of performing CHPN’s obligations under the Agreement) license to access and use the Institutional End User Materials to perform its obligations under this Agreement. Institutional End User shall indemnify, defend, and hold harmless CHPN and its affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, an “**CHPN Indemnitee**”) from and against all Losses (defined below) incurred by the CHPN Indemnitee resulting from a third-party claim that arises out of or results from (a) Institutional End User’s (or any of its Authorized Users’) use or misuse of the CHPN IP; (b) CHPN’s and/or its affiliates’ use of the Institutional End User Materials; (c) Institutional End User’s breach of any of its obligations, representations or warranties under this Agreement; (d) in connection with the use of the CHPN IP, including use of the Subscription Service, the inputting of and/or use of any information inputted to the Subscription Service by Institutional End User, any Authorized User, or through any Authorized User account, the use of any reports provided by CHPN pertaining directly or indirectly to Institutional User’s and/or any Authorized User’s use of the Subscription Service, and/or the use of any output of the Subscription Service, any violation or alleged violation of applicable laws or regulations by Institutional User and/or any Authorized User, including any and all investigations/inquiries by any governmental authority regarding whether Institutional User and/or any Authorized User violated any applicable law or regulation; or (e) any claim or allegation by or on behalf of any patient of an Institutional End User or Authorized User relating to or arising from the provision of patient care or related outcomes. “**Losses**” means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses (including reasonable attorneys’ fees). CHPN will promptly notify Institutional End User in writing of such claim and will reasonably cooperate with Institutional End User in the defense of such claim.

5. IP Rights. As between the parties, all rights, title and interest in and to Subscription Service, Documentation, Aggregated Data (defined below) and all intellectual property rights in and to the foregoing, including without limitation, trademarks, trade names, service marks, trade secrets, and know-how, products, software, computer programs, technology, information, data (including any third-party data licensed to CHPN and/or its affiliates), analytical processes, algorithms, objects, research methods, artwork, images, reports, documentation, databases, materials, clinical criteria, policies, procedures, program design, charts, notes, outlines, formats, insights, learnings, models, trained models and all improvements, modifications and derivatives thereof, and Confidential Information (defined below), owned or provided by or on behalf of CHPN or its affiliates (collectively, the “**CHPN IP**”), shall remain with CHPN, subject to any limited licenses granted under this Agreement to Institutional End User. Institutional End User, hereby unconditionally and irrevocably assigns to CHPN all right, title, and interest, including all Intellectual Property Rights, in and to the Aggregated Data. The “**Aggregated Data**” is defined as (i) data and information related to the Institutional End User and Authorized Users’ use of the Subscription Service and (ii) all data and information extracted, derived or otherwise generated from the Institutional End User Materials in an aggregated and anonymized manner. If Institutional End User or any Authorized User provides CHPN or any of its affiliates with any comments, suggestions, ideas or other feedback (collectively, “**Feedback**”), Institutional End User, on behalf of its Authorized Users, hereby grants to CHPN and its affiliates a perpetual, irrevocable, worldwide, royalty-free, fully paid up, sublicensable, and transferable license to use such Feedback without any further compensation or attribution. All other rights in and to the CHPN IP are expressly reserved by CHPN. A breach of this Section would cause CHPN irreparable harm for which monetary damages would not be an adequate remedy, and CHPN will be entitled to equitable relief (without any requirement to post a bond or other security). CHPN will not be required to prove actual damages or that monetary damages are inadequate.
6. CHPN IP Indemnification. CHPN shall indemnify, defend, and hold harmless Institutional End User from and against any and all Losses resulting from a third-party claim alleging that the Subscription Service infringes such third party’s United States copyright or patent rights; provided, however, that Institutional End User promptly notifies CHPN in writing of any such claim, cooperates with CHPN in the defense of such claim, and allows CHPN sole authority to control the defense and settlement of such claim. This Section will not apply to the extent that the claim arises from: (a) use of the Subscription Service in combination with data, software, hardware, or technology not provided by CHPN or its affiliates; (b) modifications to the Subscription Service not made by CHPN or its affiliates; (c) the Institutional End User Materials; or (d) materials and information, including any open-source or other software, documents, data, content, or components, that are not proprietary to CHPN or its affiliates. If any part of the Subscription Service is, or in CHPN’s opinion is likely to be, claimed to infringe a third party’s intellectual property right, or if Institutional End User’s use is enjoined or threatened to be enjoined, CHPN may, at its sole option: (x) obtain the right for Institutional End User to continue to use the applicable part of the Subscription Service; (y) modify or replace the Subscription Service, in whole or in part; or (z) terminate this Agreement. THIS SECTION SETS FORTH INSTITUTIONAL END USER’S SOLE REMEDIES AND CHPN’S AND ITS AFFILIATES’ SOLE LIABILITY FOR ANY CLAIM THAT THE CHPN IP INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.
7. Confidentiality. In connection with this Agreement, each party and its affiliates (as the “**Disclosing Party**”) may disclose Confidential Information (defined below) to the other party and its affiliates (as the “**Receiving Party**”). Subject to the exclusions below, “**Confidential Information**” means information in any form marked “confidential” or that otherwise should be reasonably known to be “confidential.” The Receiving Party shall safeguard the Confidential Information using at least the degree of care it uses to protect its own information and in no event using less than reasonable care.

Without limiting the foregoing, all CHPN IP is the Confidential Information of CHPN. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction; (b) was or becomes generally known by the public other than by the Receiving Party's breach of this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party, and under no obligation to maintain confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed. The Receiving Party shall only access or use Confidential Information as necessary to exercise its rights or perform its obligations under this Agreement and will only disclose Confidential Information to those who need to know under this Agreement. If the Receiving Party is compelled to disclose any Confidential Information then, it shall: (y) promptly, and prior to such disclosure, notify the Disclosing Party in writing; and (z) provide reasonable assistance to the Disclosing Party to oppose such disclosure or seek a protective order. If the Receiving Party remains required by law to disclose such Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that it is legally required to disclose. A breach of this Section would cause CHPN irreparable harm for which monetary damages would not be an adequate remedy, and CHPN will be entitled to equitable relief (without any requirement to post a bond or other security). CHPN will not be required to prove actual damages or that monetary damages are inadequate.

8. Business Associate Agreement. The protection of PHI shall be subject to the terms of the Business Associate Agreement executed by the Parties in connection with execution of the Participation Agreement. To the extent either party determines that an additional business associate agreement or other agreement is required, each party agrees that it will reasonably cooperate with the other party to enter into any such business associate agreement or other agreement.
9. Representations and Warranties. Each party represents and warrants that it is duly organized, and in good standing as an entity under the laws of the jurisdiction of its incorporation; it has the full right, power, and authority to enter into and perform its obligations under this Agreement; and when executed, this Agreement will constitute the legal, valid, and binding obligation of such party. Institutional End User represents and warrants that it shall use the CHPN IP, including use of the Subscription Service, the inputting of and/or use of any information inputted to the Subscription Service by Institutional End User, any Authorized User, or through any Authorized User account, the use of any reports provided by CHPN pertaining directly or indirectly to Institutional User's and/or any Authorized User's use of the Subscription Service, and/or the use of any output of the Subscription Service, in accordance with all applicable laws and regulations, including but not limited to the Anti-Kickback Statute, False Claims Act, Stark Law, Civil Monetary Penalties Law, and other state or federal healthcare or health insurance laws and regulations. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE IN THIS SECTION, THE SUBSCRIPTION SERVICE, AND ALL CHPN IP ARE PROVIDED "AS IS" AND CHPN AND ITS AFFILIATES SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON- INFRINGEMENT, OR THAT THE SUBSCRIPTION SERVICE, OR CHPN IP WILL BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. CHPN AND ITS AFFILIATES MAKE NO WARRANTY THAT THE SUBSCRIPTION SERVICE OR CHPN IP WILL MEET INSTITUTIONAL END USER'S REQUIREMENTS OR OPERATE WITHOUT INTERRUPTION, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, HARDWARE OR SYSTEM. CHPN AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL WARRANTIES WITH RESPECT TO THE ACCURACY, COMPLETENESS, CURRENCY OR RELIABILITY OF THE CHPN IP OR THAT ANY ERRORS CAN OR WILL BE CORRECTED. INSTITUTIONAL END USER AGREES THAT USE OF THE CHPN IP IS AT ITS SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH INSTITUTIONAL END USER. IN NO EVENT WILL CHPN

OR ANY OF ITS AFFILIATES BE LIABLE FOR ANY ACTS OR OMISSIONS OF INSTITUTIONAL END USER, ANY AUTHORIZED USER, OR ANY PAYOR ENTITY.

FURTHER, INSTITUTIONAL END USER UNDERSTANDS AND AGREES THAT CHPN AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES AND EXPLICITLY DISCLAIM THE APPROPRIATENESS OR APPLICABILITY OF ANY COMPONENT OF THE CHPN IP, INCLUDING THE SUBSCRIPTION SERVICE AND DOCUMENTATION, TO ANY SPECIFIC PATIENT'S CARE OR TREATMENT. WHEN SEEKING TO TREAT A PATIENT USING ANY CONTENT FROM THE CHPN IP, INCLUDING THE SUBSCRIPTION SERVICE AND DOCUMENTATION, INSTITUTIONAL END USER UNDERSTANDS AND AGREES THAT ALL MEDICAL SERVICE PROVIDERS ARE EXPECTED TO USE THEIR OWN INDEPENDENT MEDICAL JUDGMENT IN THE CONTEXT OF INDIVIDUAL CLINICAL CIRCUMSTANCES OF A SPECIFIC PATIENT'S CARE OR TREATMENT.

INSTITUTIONAL END USER ACKNOWLEDGES AND AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE TRUTH, ACCURACY, AND COMPREHENSIVENESS OF STATEMENTS IT MAKES TO CHPN, CMS, OTHER PAYORS, OR OTHERS, PERTAINING TO RISK ADJUSTMENT MATTERS, OR OTHER MATTERS AFFECTING PAYMENT UNDER ANY FEDERAL HEALTHCARE PROGRAM, AND FOR ENSURING THAT, TO THE EXTENT IT RELIES ON INFORMATION DOCUMENTED WITHIN OR THROUGH THE SUBSCRIPTION SERVICE OR OTHERWISE OUTPUTTED BY THE SUBSCRIPTION SERVICE FOR SUCH PURPOSES, THAT IT DOES SO AT ITS OWN RISK, AND SUBJECT TO ITS INDEPENDENT EVALUATION OF THE TRUTH, ACCURACY, AND COMPREHENSIVENESS OF SUCH INFORMATION. CHPN AND ITS AFFILIATES EXPLICITLY DISCLAIM ANY RESPONSIBILITY TO ENSURE THE TRUTH, ACCURACY, OR COMPREHENSIVENESS OF SUCH INFORMATION, OR ANY DERIVATIVE STATEMENTS.

INSTITUTIONAL END USER FURTHER ACKNOWLEDGES AND AGREES THAT APPROPRIATE USE OF THE SUBSCRIPTION SERVICE INCLUDES COMPLIANCE WITH THE FOLLOWING REQUIREMENTS, WHICH IT SHALL COMPLY WITH AND ENSURE ITS AUTHORIZED USERS COMPLY WITH: (1) CLINICIAN AUTHORIZED USERS COMPLETING THE VISIT WORKFLOW DURING OR AS SOON AS PRACTICABLE AFTER THEIR FACE-TO-FACE ENCOUNTERS WITH APPLICABLE PATIENTS USING THEIR INDEPENDENT MEDICAL JUDGMENT IN COMPLETING EACH AND EVERY TASK; (2) TO THE EXTENT CLINICIAN AUTHORIZED USERS RELY ON ANY INFORMATION PRESENTED BY THE SUBSCRIPTION SERVICE WHEN COMPLETING SUCH WORKFLOW, SAID AUTHORIZED USERS CONSIDERING SUCH INFORMATION DURING THE FACE-TO-FACE ENCOUNTERS; AND (3) CLINICIAN AUTHORIZED USERS ONLY CONFIRMING DIAGNOSIS CODES THAT (A) ARE ACCURATE AND TRUTHFUL; (B) CORRESPOND TO CLINICAL DIAGNOSES ASSESSED BY SAID AUTHORIZED USERS DURING THE FACE-TO-FACE ENCOUNTERS; AND (C) ARE DOCUMENTED CONSISTENT WITH THE OFFICIAL ICD-10-CM GUIDELINES. CHPN AND ITS AFFILIATES EXPLICITLY DISCLAIM ANY RESPONSIBILITY FOR ENSURING APPROPRIATE USE OF THE SUBSCRIPTION SERVICE BY INSTITUTIONAL END USER AND AUTHORIZED USERS, AND INSTITUTIONAL END USER EXPLICITLY ACKNOWLEDGES, AGREES, AND WARRANTS, THAT ANY SUCH LIABILITY RESULTING FROM INAPPROPRIATE USE, INCLUDING FAILURE TO COMPLY WITH THE FOREGOING REQUIREMENTS, RESTS ENTIRELY WITH INSTITUTIONAL END USER AND/OR THE AUTHORIZED USERS, AS APPLICABLE, AND NEVER WITH CHPN OR ITS AFFILIATES.

10. Limitations of Liability. IN NO EVENT WILL CHPN OR ANY OF ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER THIS AGREEMENT, INCLUDING FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, LOSS, INTERRUPTION, OR DELAY OF THE COUNTERPART INTELLECTUAL PROPERTY; (c) LOSS, DAMAGE, CORRUPTION, BREACH OR RECOVERY OF INSTITUTIONAL END USER MATERIALS OR DATA; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER COUNTERPART WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF CHPN AND ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED \$500. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. Institutional End User acknowledges and agrees that the above limitations of liability, together with the other provisions in this Agreement that limit liability, are essential terms and that CHPN would not be willing to grant you the rights set forth in this Agreement but for your agreement to the above limitations of liability. Institutional End User agrees that any claim or cause of action arising out of or related to this Agreement must be filed within one (1) year after such claim or cause of action arose or such claim or cause of action will be forever barred. INSTITUTIONAL END USER AGREES THAT END USER MAY BRING CLAIMS AGAINST CHPN AND ITS AFFILIATES ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. All remedies set forth in this Agreement are in addition to all other remedies that may be available at law, in equity, or otherwise.
11. Term and Termination. This Agreement shall remain in effect until terminated. This Agreement may be terminated by mutual agreement or by CHPN with or without cause, by sending written notice to Institutional End User. In the event that the Participation Agreement is terminated, this Agreement will also automatically and immediately terminate. Upon any expiration or termination of this Agreement, all rights and licenses granted herein to Institutional End User and the Authorized Users will immediately terminate, and Institutional End User shall promptly return to CHPN or destroy all of the CHPN IP and CHPN's Confidential Information in its possession or control. The following sections will survive any expiration or termination of this Agreement: Sections 3-7, 9-13.
12. Miscellaneous. Institutional End User may not assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without CHPN's prior written consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement is governed by and construed in accordance with the laws of the State of New Jersey without giving effect to any choice or conflict of law provision. Any action or proceeding arising out of or related to this Agreement will be instituted in the State of New Jersey and each party irrevocably submits to the jurisdiction of such courts. Service of process by mail to such party's address set forth in the Agreement shall be effective service of process for any such action. THE PARTIES HEREBY AGREE TO WAIVE THE RIGHT TO A JURY TRIAL ON ANY DISPUTES THAT MAY ARISE UNDER THIS AGREEMENT. The relationship between the parties is that of independent contractors and nothing in this Agreement shall be construed as creating any agency, partnership, joint venture, or other joint relationship between the parties. The headings in this Agreement are for reference only. CHPN may use Institutional End User's name, logo, trademark, or service mark in any customer list or in advertising or promotional material including CHPN's or CHPN's affiliates' websites, without Institutional End User's prior written approval. Nothing herein, express or implied, is intended to or

shall confer upon any third party any legal or equitable right, benefit, or remedy of any kind. If a provision is invalid, illegal, or unenforceable in any jurisdiction, it shall not affect any other provision in this Agreement or render unenforceable such provision in any other jurisdiction. Upon any such determination of invalidity, illegality, or unenforceability, the parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible. No waiver by any party of any provision of this Agreement shall be effective unless set forth in writing. No failure to exercise, or delay in exercising, any rights arising from this Agreement will operate or be construed as a waiver thereof. In no event will a party be liable to the other party in the event failure or delay occurs due to any circumstances beyond such party's reasonable control, such as fire, explosion, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers or regulatory or governmental bodies (but excluding Institutional End User's payment obligations under this Agreement). All notices hereunder (each, a "Notice") must be in writing and sent to the address set forth in the Participation Agreement, in the manner set forth in the Participation Agreement.

13. Entire Agreement; Amendments. This Agreement, together with the Participation Agreement, and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings and agreements. Amendments or modifications of this must be in writing and mutually executed by the parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. In the event of a conflict between this Agreement and the Participation Agreement, the terms of this Agreement shall govern with respect to the provision and use of the Subscription Service.