

## ABILITY EASE (f.k.a. DDE-Z) License Agreement

Thank you for selecting ABILITY EASE (f.k.a. DDE-Z) online software (the "Software"). This online end user license agreement ("Agreement") is a legal agreement between you, either an individual person or a single legal entity ("You") and ABILITY Network Inc. ("Provider"). You must accept the terms of this Agreement before accessing or otherwise using the Software or any of the services that may be provided by Provider under this Agreement ("Services").

If You do not agree to the terms of this Agreement, You are not granted any rights whatsoever with respect to Software and Services. By clicking "ACCEPT" or by accessing or otherwise using the Software, You agree to be bound by the terms of this Agreement. If You are not willing to be bound by this Agreement, You should not click on the "ACCEPT" button, and You may not access or otherwise use the Software or Services.

By clicking "ACCEPT" or by accessing or otherwise using the Software, you represent and warrant that you have the authority and capacity to enter into this Agreement. If you are an individual person accepting this Agreement on behalf of your employer or other legal entity, you represent and warrant that you are duly authorized and have the capacity to do so. If you do not have the authority to bind your employer or such other legal entity, you should **not** click on the "ACCEPT" button and should forward this Agreement to your employer's or such other legal entity's management and request that they review and click through to accept the terms of this Agreement.

**1. LICENSE GRANT.** Subject to the terms and conditions of this Agreement, Provider grants You a limited, non-exclusive, non-transferable license to electronically access and use the Software solely to assemble, compile, or otherwise prepare reports (the "Reports") in electronic or written form that are generated from the Imported Data (as defined below) and to enable You to import your organization's data from Medicare's Direct Data Entry system (the "Imported Data") for use by the Software, beginning with the date upon which You agree to the terms of this Agreement by clicking "Accept" (the "Start Date") and continuing until terminated pursuant to Section 13 of this Agreement (the "Term"). You shall have no right to download or otherwise be provided with a copy of the Software and your use of the Software shall be exclusively through the website [www.dde-z.com](http://www.dde-z.com) (the "Website"). The term of this License and your right to use the Software shall be solely during the Term. To access and use the Software and Services, You must have access to the Internet.

In addition to the Provider online software, the Software includes any other programs, tools, Internet-based services, components and any "updates" (for example, maintenance, service information, help content, bug fixes, or maintenance releases) of the Software that Provider makes available to You. The granting of the license herein is expressly conditioned on your agreement to this Agreement. If You have contracted to receive the Services through an authorized distributor or reseller of the Services, your use of the Services, and the grant of the license herein, is expressly conditioned upon You agreeing to this Agreement.

The price You will pay for the rights provided to You and the time for payment shall be as set forth in Provider's sales order form.

**2. RESTRICTIONS.** This license does **not** include the right to, and You shall **not**, directly or indirectly, or assist or allow any third party to, do any of the following: (i) access or attempt to access any other Provider systems, programs or data **that are not generally made available for use by Provider's customers licensing the Software**; (ii) copy, reproduce, republish, upload, post, transmit, resell or distribute in any way the material from the Website; (iii) publishing, distributing via the Internet or other

public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available the Reports or any portion thereof to any third party, (iv) permit any third party to benefit from the use or functionality of the Software or Services via a rental, lease, timesharing, service bureau, or other arrangement; (v) transfer any of the rights granted to You under this Agreement; (vi) work around any technical limitations in the Software, use any tool to enable features or functionalities that are otherwise disabled in the Software, or directly or indirectly decompile, disassemble, or otherwise reverse engineer the Software; (vi) perform or attempt to perform any actions that would interfere with the proper operation of the Software or Services, prevent access to or the use of the Software or Services by Provider's other licensees or customers, or impose an unreasonable or disproportionately large load on Provider's infrastructure; or (vii) otherwise use the Software except as expressly allowed herein. You shall at all times, both during and after the Term, hold in strict confidence the Software, the results of any Services and any other information of any nature whatsoever provided by Provider to You hereunder.

**3. SERVICES.** Provider shall provide Services consisting of granting You a limited and non-exclusive right to access Provider's computer system (the "System") which (a) hosts the Software on Provider's servers which shall be remotely accessible by You at the Website from any Web browser compatible with the Software (as listed by Provider at the Website) using your computer system, and (b) stores your Medicare data on Provider's servers, which Medicare data You import onto the System using the Software. Provider will not have access to your Medicare usernames and passwords necessary to access Medicare's and any of its contractor's computers systems (the "Medicare Information"). The Medicare Information will be encrypted by the Software and stored on Provider's HIPAA compliant computer system. You shall be solely responsible for maintaining the confidentiality and security of your Medicare Information and preventing unauthorized access to or use of the Medicare Information.

**4. RESERVATION OF RIGHTS.** The Software is licensed, not sold, and Provider reserves all rights not expressly granted to You in this Agreement. The Software is protected by copyright, trade secret and other intellectual property laws. Provider and Provider's licensors, if any, own the title, copyright, and other worldwide intellectual property rights in the Software and all copies of the Software. This Agreement does not grant You any rights to any trademarks or service marks of Provider.

**5. REGISTRATION DATA.** You must register to use the Software and Services and (i) provide true, accurate, current and complete information as prompted by the interview sign-up process or in connection with your communications with Provider representatives during the sign-up process (the "Registration Data"), and (ii) maintain and promptly update the Registration Data to keep it accurate, current and complete. If You provide any Registration Data that is inaccurate, not current or incomplete, or Provider has reasonable grounds to suspect is inaccurate, not current or incomplete, Provider may, in its sole discretion, suspend or terminate your account and refuse any and all current or future access to and use of the Software or Services.

**6. ACCESS INFORMATION AND ACCOUNT DATA.** You are solely responsible for (i) maintaining the confidentiality and security of your access number(s), password(s), account number(s), login information, and any other security or access information, used by You to access the Software and Services (the "Access Information"), and (ii) preventing unauthorized access to or use of the information, files or data that You store or use in or with the Software and Services (the "Account Data"). You are solely responsible for allowing or preventing access and assigning passwords to other users under your account for the Software and Services, and ensuring that such users authorized by You comply with this Agreement. You are responsible for all electronic communications, including account registration and other account holder information, email and financial, accounting and other data ("Communications") entered using the Access Information. Provider assumes that any Communications it receives through use of the Access Information were transmitted or authorized by You. You will immediately notify Provider

if You become aware of any loss, theft or unauthorized use of any Access Information. Provider reserves the right to deny You access to the Software or Services if Provider reasonably believes that any loss, theft or unauthorized use of Access Information has occurred. You must inform Provider of, and hereby grant to Provider permission to use, Access Information to enable Provider to provide the Services to You, including updating and maintaining Account Data, addressing errors or service interruptions, and to enhance the types of data and services Provider may provide to You in the future. You also grant Provider permission to combine your Account Data with that of others in a way that does not identify You or any individual personally, to improve Services and to compare usage practices.

**7. USE, MODIFICATIONS AND MAINTENANCE.** Provider shall have the right to revise, update, or otherwise modify the Software or Services and establish or change limits concerning use of the Software and Services, temporarily or permanently. **Provider shall have the right to make any such changes effective immediately to maintain the security of the System or Access Information or to comply with any laws or regulations (including, but not limited to, HIPAA and HITECH) and provide You with electronic or written notice within fifteen (15) days after such change.** You will comply with any and all such changes **made by Provider.** You are solely responsible for periodically reviewing the Website for any change, deletion, discontinuance, or imposition of conditions on any feature or aspect of Software and Services. Provider may, from time to time, perform maintenance upon the Software or Services resulting in interrupted service, delays or errors in the Software or Services. Provider will attempt to provide prior notice of scheduled maintenance but cannot guarantee that such notice will be provided.

**8. CONDUCT.** You are solely responsible for the content of your transmissions through the use of the Software. Provider reserves the right to take any action with respect to the Software or Services that Provider deems necessary or appropriate, in Provider's sole discretion, if Provider believes You or your transmissions or use of the Software or Services are not in Provider's best interests. You will: (1) comply with all United States laws, rules and other regulations applicable in connection with the Software and Services; (2) not use the Software and Services for illegal purposes; (3) not interfere or disrupt networks connected to the Software and Services; (4) not use the Software and Services to infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; and (5) not transmit through the Software and Services any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature. You will not attempt to gain unauthorized access to other computer systems and You will not interfere with another user's use and enjoyment of the Software and Services.

**9. THIRD PARTY WEBSITES.** The Software may contain or reference links to websites operated by third parties ("Third Party Websites"). These links are provided as a convenience only. Third Party Websites are not under the control of Provider. Provider is not responsible for the content of any Third Party Website or any link contained in a Third Party Website. Provider does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Websites, and the inclusion of any link in the Software or Services is not and does not imply an affiliation, sponsorship, endorsement, approval, investigation, verification or monitoring by Provider of any information contained in any Third Party Website. In no event will Provider be responsible for the information contained in a Third Party Website or for your use of or inability to use such website. Access to any Third Party Website is at your own risk, and You acknowledge and understand that linked Third Party Websites may contain terms and privacy policies that are different from those of Provider. Provider is not responsible for such provisions, and expressly disclaims any liability for them.

**10. FEEDBACK.** Provider may provide You with a mechanism to provide feedback, suggestions and ideas, if You choose, about its online Software and Services ("Feedback"). Provider may, in its sole discretion, use the Feedback in any way, including in future modifications of the Software, multimedia

works or advertising and promotional materials relating thereto, including, but not limited to, using modifying, creating derivative works from, distributing and displaying any information in the Feedback.

**11. PRIVACY.** Provider abides by its privacy policies with respect to how it may or may not use or disclose the information You furnish directly to Provider, including the Access Information and Registration Data. For further details about Provider's privacy statement, visit <http://www.dde-z.com/privacy.html> or the privacy policy link on the Website. You will be bound by the Provider privacy statement, as amended from time to time.

**12. HIPAA COMPLIANCE.** Through use of the Software and Services, You may be accessing your organization's confidential information, some of which may be considered "protected health information" or "PHI," as such terms are defined under HIPAA. You are solely responsible for assuring that your access, use and any further disclosure of such information, including any PHI, complies in all respects with HIPAA and its related privacy and security rules, the HITECH Act, including any HITECH regulations that may be promulgated from time to time, and any other state law that may be applicable to You or your organization or otherwise protects the privacy or security of such information that You may access through the Software. In addition, You agree to the specific terms and conditions of the HIPAA Addendum attached as Appendix 1 and made a part of this Agreement.

**13. TERMINATION.** Provider may, in its sole and unfettered discretion, immediately and without notice terminate this license and your right to use the Software and Services if (a) You breach any term of this Agreement; (b) You fail to pay any subscription or other fee when due to Provider, an authorized reseller or distributor which is authorized by Provider to resell or distribute the Services and or the Software; (c) Provider is unable to verify or authenticate any information You provide to Provider; (d) such information is inaccurate; or (e) Provider, in its sole discretion, discontinues offering the Service or Software to You. Furthermore, Provider may, in its sole and unfettered discretion, with 30 days notice, terminate this license and your right to use the Software and Services, for any reason whatsoever, including no reason. Provider shall not be liable to You or any third party for termination of your ability to use or receive the Software or Services. You may terminate this license and your use of the Service and Software at any time with 30 days notice, for any reason or for no reason. Upon termination of this Agreement, You shall remain liable for all fees incurred or accrued by You, if any, up and through the date of termination. Upon expiration or termination for any reason, You are prohibited from further use of the Services or Software. When this Agreement is terminated or your account is canceled, You will no longer have access to data and other information You may have stored on the System and that information may be deleted by Provider, as otherwise permitted by applicable laws. Provider shall not be liable to You or any third party for any termination of your access to the Software or deletion of the Access Information and data and other material You have stored on the System.

**14. DISCLAIMER OF WARRANTIES.**

**THE SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER DISCLAIMS ALL GUARANTEES AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE AND SERVICES, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND NON-INFRINGEMENT. USE OF THE SOFTWARE OR SERVICES IS AT YOUR SOLE RISK. PROVIDER MAKES NO WARRANTY THAT THE SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY OR ERROR FREE, NOR DOES PROVIDER MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SOFTWARE OR SERVICES OR THE ACCURACY OF ANY**

**OTHER INFORMATION OBTAINED THROUGH THE SOFTWARE OR SERVICES OR THAT DEFECTS IN THE SOFTWARE OR SERVICES WILL BE CORRECTED. ANY MATERIAL OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE OR SERVICES IS DONE AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL OR DATA.**

**PROVIDER MAKES NO REPRESENTATIONS THAT THE SERVICES OR SOFTWARE WILL COMPLY WITH THE RULES, REGULATIONS OR GUIDELINES OF ANY PARTICULAR HEALTH CARE PROVIDER, HEALTH CARE INSURER, FEDERAL OR STATE HEALTH INSURANCE PROGRAM, OR ANY OTHER THIRD PARTY HEALTH CARE ADMINISTRATOR FROM WHOM YOU MAY SEEK PAYMENT OF MEDICAL CLAIMS.**

**15. LIMITATION OF LIABILITY.**

**THE CUMULATIVE LIABILITY OF PROVIDER FOR ALL MATTERS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE SOFTWARE OR SERVICES THAT DIRECTLY CAUSED THE DAMAGE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES RELATING TO LOSS OF BUSINESS, TELECOMMUNICATION FAILURES, LOSS, CORRUPTION, SECURITY OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF PROFITS OR INVESTMENT, OR THE LIKE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.**

**16. INDEMNITY.** You shall indemnify, defend and hold Provider harmless from and against any loss, cost, damages, penalties, liability or expense, including attorneys' fees, whether incurred by You or a third party, that arises out of, relates to or results from (a) any third-party claim, action or allegation of infringement based on information, data, files or other content submitted by You; (b) any breach of any the terms contained in this Agreement by You; (c) incurred by You arising out of or related to your use of the Software or Services; or (d) any third-party claim, action or allegation brought against Provider arising out of or relating to your use of the Software or Services. You will defend, indemnify and hold Provider harmless from and against any and all claims, losses, liability costs and expenses (including attorneys' fees) arising from your authorized users' violation of this Agreement, state or federal laws or regulations, or any third party's rights, including, but not limited to, infringement of any copyright, violation of any proprietary right or invasion of any privacy rights.

**17. LIMITATION ON TIME TO SUE.** Any action or proceeding by You to enforce an obligation, duty, or right arising under this Agreement or by law with respect to the Software or Services must be commenced within one year after the cause of action accrues.

**18. SURVIVAL.** Any termination of this Agreement notwithstanding, provisions which are intended to survive and continue shall so survive and continue including, but not limited to, Sections 2, 12, 13, 14, 15, 16, 17, 18 and 19.

**19. MISCELLANEOUS.** Except as expressly set forth in this Agreement, this Agreement is the complete statement of the agreement between You and Provider and sets forth the entire liability of

Provider and your exclusive remedy with respect to the Software and Services. The suppliers, agents, employees, distributors, and dealers of Provider are not authorized to make modifications to this Agreement, or to make any additional representations, commitments, or warranties binding on Provider. Any waiver of the terms herein by Provider must be in writing signed by an authorized officer of Provider and expressly referencing the applicable provisions of this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. **This Agreement will be governed by Minnesota law as applied to agreements entered into and to be performed entirely within Minnesota, without regard to its choice of law or conflicts of law principles that would require the application of law of a different jurisdiction, and applicable federal law. YOU CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE OF MINNESOTA IN THE UNITED STATES OF AMERICA.** The failure or refusal by Provider to either insist upon the strict performance of any provision of this Agreement or to exercise any right in any one or more instances or circumstances shall not be construed as a waiver or relinquishment of such provision or right, nor shall such failure or refusal be deemed a custom or practice contrary to such provision or right. A waiver of default shall not be a waiver of any other or subsequent default. Any waiver by Provider of any rights arising from a breach of any covenants or conditions of this Agreement shall be in writing and shall not be construed as a continuing waiver of other breaches of the same nature or other covenants or conditions of this Agreement. Headings are included for convenience only, and shall not be considered in interpreting this Agreement.

## Appendix 1

### HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Agreement (“HIPAA Agreement”), effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is made by and between \_\_\_\_\_ (“Covered Entity”) and ABILITY Network Inc. (“ABILITY”) for the purpose of compliance with the Health Insurance Portability and Accountability Act and its implementing administrative simplification regulations (45 CFR 160-164) (“HIPAA”) and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”). This HIPAA Agreement hereby amends and is incorporated into any underlying agreement with respect to Covered Entity and ABILITY; to the extent that the provisions of this HIPAA Agreement conflict with those of an underlying agreement, the provisions of this HIPAA Agreement shall control. Terms used but not otherwise defined herein shall have the same meaning as those terms defined in 45 CFR 160.103 and 164.501.

If, in the provision of services to Covered Entity, ABILITY representatives receive or have access to Protected Health Information (“PHI”) that is created and/or maintained by Covered Entity, ABILITY shall be bound to the terms outlined below. These provisions will not apply to the disclosure, use or access to de-identified information:

1. Permitted Uses and Disclosures. ABILITY may use and disclose PHI, if in the course of performing services for or on behalf of Covered Entity or as required or permitted by law, regulation, regulatory agency or by any accrediting body to whom Covered Entity or ABILITY may be required to disclose such PHI; ABILITY may also use PHI for the proper management and administration, or to carry out the legal responsibilities of ABILITY.
2. ABILITY’s Obligations. ABILITY shall:
  - a. ensure that its agents and subcontractors to whom it may provide PHI agree to the same terms and conditions as are applicable to ABILITY as set forth herein;
  - b. implement appropriate and reasonable safeguards to prevent use or disclosure of PHI other than as permitted herein and report to Covered Entity any use or disclosure of PHI not provided for by this Agreement;
  - c. make available to the Secretary of Health and Human Services, ABILITY’s practices, books and records relating to the use or disclosure of PHI for purposes of determining Covered Entity’s compliance with HIPAA; subject to any attorney-client or other privileges;
  - d. report to the Covered Entity, and mitigate to the extent practicable, any harmful effect that is known to ABILITY of, uses or disclosures of PHI of which ABILITY becomes aware that do not comply with the terms herein;
  - e. to the extent that Covered Entity and ABILITY agree in writing that ABILITY shall maintain PHI as part of a Designated Record Set, upon Covered Entity’s request, provide access and make amendments to such PHI, in order to meet the requirements under HIPAA.
  - f. document such uses and disclosures of PHI and, upon Covered Entity’s request, provide such information as would be required for Covered Entity to account for disclosures of PHI as required under HIPAA; and
  - g. when ABILITY ceases to perform services for or on behalf of Covered Entity, ABILITY will destroy all PHI received or if such destruction of PHI is not feasible, continue to abide by the terms set forth herein with respect to such PHI.
  - h. following a discovery of a breach of Unsecured Protected Health Information, as defined in HITECH, notify Covered Entity of such breach within thirty (30) days of the discovery of the breach.
  - i. use Covered Entity’s EDI password only as expressly authorized by Covered Entity and only for the submission and retrieval of Covered Entity’s EDI transactions. If covered entity uses ABILITY for exchange of EDI transactions with their Medicare contractor, this paragraph grants this explicit authorization.
3. Term and Termination. The term of this HIPAA Agreement shall be effective as of the date set forth above and shall terminate when ABILITY ceases to perform services with respect to Covered Entity, except as provided in 2(g) above. Covered Entity may terminate this HIPAA Agreement if ABILITY fails to cure or take substantial steps to cure a material breach of this HIPAA Agreement within 30 days after receiving written notice of such material breach from Covered Entity.

4. Agreement. This Agreement constitutes the entire Agreement between the parties. This Agreement may be amended only in writing signed by Covered Entity and ABILITY. The parties agree to take such action to amend this Agreement as is necessary to comply with the requirements of HIPAA and HITECH. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Minnesota, including all matters of construction, validity and performance.

ABILITY Network Inc.

\_\_\_\_\_  
Covered Entity

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_