

ABILITY Network Inc. Network Service Agreement

BY USING THE SERVICE, YOU ("CUSTOMER") AGREE TO BE BOUND BY THE TERMS OF THIS NETWORK SERVICE AGREEMENT ("AGREEMENT"), AND SUBJECT TO ANY ORDER FORM FOR THE SOFTWARE AND/OR SERVICES. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN ALL MATERIALS (INCLUDING ANY ELECTRONIC OR PRINTED MATERIALS) TO ABILITY NETWORK INC. ("ABILITY")

1. DEFINITIONS.

"Connection Change Fee" – shall mean the fee associated with a change in connection pathways requested by the Customer or necessitated by a change in Medicare contractor connectivity.

"Connections" - shall mean the number of electronic pathways Customer may establish between Software as set forth in the applicable Customer Order Form.

"Documentation" – shall mean the technical manuals made generally available by ABILITY to enable Customer to use and reasonably understand the operation and use of the Software.

"Order Form" – shall mean the fully executed ABILITY Software and Services Order form representing the Customer's purchase of ABILITY products and services.

"Service(s)" – shall consist of product support and Managed Service as described in Section 3.

"Software" – shall consist of ABILITY software products provided to Customer by ABILITY under the terms of this Agreement, in object code, machine readable format only, all permitted whole or partial reproductions made pursuant to the license granted as set forth hereinafter, and any updates, revisions, improvements or materials (if any) subsequently provided under ABILITY's supported service(s). Software may include programs of third parties which ABILITY is authorized to include as part of its Software. In no event shall Customer make any separate use of such third party programs which are only sublicensed to Customer to use as an integral part of the Software.

2. PERMITTED USE; RESTRICTIONS. The Software, Documentation and their accompanying written materials are protected, among other ways, by federal copyright law and international treaties. Customer may, on a nonexclusive basis, use the Software only for the processing of Customer's own information and data, and such customer data as Customer normally processes in the ordinary course of Customer's business. The Software must be installed and operated on computer hardware operated by Customer and under Customer's sole control, and this license does not permit the installation on remote, hosted or application service provider hardware operated by a third-party. The number of Connections the Customer is entitled to access and use is determined by the type of package purchased as set forth in the applicable Order Form. Additionally, Customer shall not itself, or through any affiliate, agent or third party: (i) sell, lease, license or sublicense the Software or Documentation; (ii) use the Software to provide processing services to third parties or otherwise use the Software on a service bureau basis; or (iii) remove any trademark, copyright or other proprietary notices, labels or marks on or in the Software or Documentation and shall reproduce such notices, labels and marks on any copies of such Software and Documentation Customer makes in connection with Customer's permitted use of the Software and Documentation hereunder. Customer will promptly notify ABILITY of any unauthorized disclosure, reproduction or distribution of the Software or Documentation, which comes to Customer's attention, or which Customer reasonably suspects. Customer is solely responsible for obtaining all equipment, and the compatibility thereof with the Software, and for paying all fees including, without limitation, all applicable taxes and Internet access fees, necessary to use the Software.

3. PRODUCT SUPPORT AND MANAGED SERVICE; RESTRICTIONS

a) Product Support and Managed Service. Managed Service activities shall include: 1) configuration and ongoing management of Customer Connections, 2) ongoing monitoring of Service to ensure reliable and efficient network operations, 3) routine "bug fixes", patches, error corrections to the supplied software, 4) troubleshooting, advice and assistance in the form of telephone or e-mail support, and 5) modifications, incremental enhancements, and updates of the licensed computer software; as ABILITY, at its option, may elect to offer its customers.

b) Restrictions. The purchase of Service shall not entitle Customer to receive any custom modifications or custom updates of the Service to further enhance the Software or other customization for the Customer's system or applications. Such services may be provided by ABILITY under separate agreement.

c) Coverage. ABILITY will provide telephone and e-mail customer support Monday through Friday 7AM to 6PM CST. ABILITY will provide support to evaluate and assist in the resolution of problems related to the Customer's use of the Software. The target response time for a call is two (2) hours from the time of the initial contact with ABILITY.

4. SERVICE FEES AND PAYMENT.

a) Fees. Any license or service fees shall be set forth in the Order Form (the "Service Fee"). After the initial term, Service Fees shall be subject to adjustment by ABILITY on sixty (60) day written notice to the Customer. In the event a change in connection pathways is requested by the Customer or is necessitated by a change in Medicare contractor connectivity, the Connection Change Fee shall be based on the then current ABILITY standard price list. Customer shall pay directly or reimburse ABILITY or its designee for all sales, use or related taxes, exclusive of income taxes.

b) Payment. The Service Fees shall be payable by Customer subject to the terms of the Order Form. Unpaid fees are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less.

5. INTELLECTUAL PROPERTY RIGHTS. Customer acknowledges that ABILITY, its vendors and licensors, retain all intellectual property rights and title (including any patent, copyright, trademark and other rights) in and to all Software and Documentation and their Confidential Information, trade secrets or other proprietary information, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, comprising, embodied in, or practiced in connection with the Software, including without limitation all modifications, enhancements, configurations, upgrades, and interfaces thereto (the "Works"). ABILITY reserves and retains all intellectual property rights and title associated with Works and derivatives of Works, including without limitation all Works or derivatives developed or created by ABILITY or its personnel or contractors during the course of providing the Software to Customer. The Software, including its operation, code, architecture and implementation, as well as the look and feel of the Software, is the valuable intellectual property of ABILITY. The Software is protected by United States copyright laws and international treaty provisions. This Agreement does not give Customer any intellectual property rights in the Software except for the license granted in Section 5.a.

a) License. In exchange for the payment by Customer of the applicable Service Fees, ABILITY grants to Customer during the term of this Agreement a non-exclusive, non-transferable license to use each copy of the Software received from ABILITY on a single CPU under Customer's control. Customer may make one (1) copy of the Software for archival or backup purposes only. Unless otherwise specified in the Order Form, Customer may not use the Software concurrently on multiple CPUs without purchasing one (1) Service for each CPU that will be in concurrent use. Customer is expressly prohibited from sublicensing, selling, renting, leasing or otherwise distributing copies of the Software. Customer will not disassemble, decompile, reverse engineer or make any other attempt by any means to discover or obtain the source code for the Software. In the event any modifications are made to the Software by anyone other than ABILITY, all warranties with respect to the Software shall immediately terminate.

b) Proprietary Markings and Copyright Notices. Customer will not remove or destroy any proprietary, trademark or copyright markings or notices placed upon or contained within any Software or Documentation. The placement of a copyright notice on Software or Documentation shall not constitute publication or otherwise impair the confidential or trade secret nature of the Software or Documentation.

c) Use of Data. Customer acknowledges that ABILITY may retain, access, use and disclose any de-identified data received from Customer in any manner permitted by law. Any access, use or disclosure of protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act will be governed by the Business Associate Agreement in effect between the parties. Any information that is not considered PHI may be accessed, used and disclosed by ABILITY in any manner permitted by law.

6. CONFIDENTIAL INFORMATION. The Software and Documentation including, without limitation, trade secrets, performance data, design, features, layouts, configurations, processes, formulae, specifications, programs, test results, technical know-how, methods and procedures of operation and other information relating to or obtained from the Software, by use, examination or otherwise, which is not generally publicly known are the valuable trade secrets of ABILITY and its licensors, and shall be deemed to be confidential information of ABILITY ("Confidential Information"). In addition, any information or materials disclosed or provided to Customer by ABILITY or its personnel and specified as confidential or proprietary or marked as confidential or proprietary shall be deemed to be Confidential Information of ABILITY. Customer shall use the same degree of care to protect the Confidential Information from non-disclosure as Customer would use with respect to Customer's own information of like importance which Customer does not desire to have published or disseminated, but in any event no less than reasonable care. Customer will not use any Confidential Information for any purpose not expressly authorized under this Agreement and will not disclose to third parties any such Confidential Information.

7. TERM AND TERMINATION.

a) Term. Service shall commence upon Customer's receipt of the Software and shall thereafter renew automatically for successive terms of the length specified in the Order Form. Either party may terminate this Agreement with written notice of no less than sixty (60) days.

b.) If Customer fails to pay any Service Fee when due, ABILITY will notify Customer that payment has not been received. If after 30 days' notice of Customer's failure to pay, Customer has failed to cure and still has not paid the Service Fee, ABILITY may, at its sole discretion: (a) terminate this Agreement immediately upon notice to Customer; (b) withhold delivery of all or a portion of the Software, the Software functions or Documentation; (c) disable all Customer Connections; or (d) seek enforcement of Customer's obligation to pay the entire Service Fee as a condition precedent to any other obligation of ABILITY hereunder. This Agreement will terminate (a) immediately upon notice if Customer attempts to reverse engineer the Software, or (b) thirty (30) days after prior written notice of Customer's material breach of this Agreement subject to Customer's right to cure such breach during the notice period. Upon termination, (a) ABILITY shall disable all Connections, and (b) Customer shall uninstall, remove and destroy all copies of the Software or any part of the Software from any and all computer storage devices under Customer's control, and destroy all copies of the Documentation. Upon request by ABILITY, Customer or Customer's authorized signatory shall certify in writing to ABILITY that all complete and partial copies of the Software and the Documentation have been destroyed and that none remain in Customer's possession or under Customer's control.

c) Insolvency. This Agreement shall terminate upon the election of and notice from a party to the other if the other party is adjudged insolvent or bankrupt, or the institution of any proceedings by or against the other party seeking relief, reorganization or arrangement under any laws relating to

insolvency, or any assignment for the benefit of creditors, or the appointment of a receiver, liquidator or trustee of any of the other party's property or assets, or the liquidation, dissolution or conclusion of the other party's business.

d) Effect of Termination. Upon expiration or termination of the Agreement for any reason, all use of the Service by Customer shall cease, and Customer shall pay to ABILITY all accrued fees and other amounts.

e) Survival of Certain Terms. The provisions of Sections 5 (but not part (a)), 6, 7, 8, 9(b), 10, 11, 12, 13, 14, 15, 16, 17, 19 and 20 shall survive expiration or termination of this Agreement.

8. REACTIVATION. Customer may reactivate Service, with the prior written consent of ABILITY, at any time after its expiration, by payment to ABILITY of the Service Fee then in effect. ABILITY may, at its discretion, refuse to allow such reactivation of Service or charge a reactivation fee of up to \$250.

9. WARRANTIES

a) ABILITY warrants that: i) its Services will be of professional quality and will conform to generally accepted professional standards; ii) its personnel shall be competent and qualified to perform the tasks to which they are assigned; and iii) it has the right to grant the licenses provided herein. If the Software fails to comply with such warranty, ABILITY will repair or replace the Software if returned by Customer within ninety (90) days of receipt by Customer. These remedies are provided on the condition that: (i) ABILITY is promptly notified in writing of the particular defects or nonconformance of Software as delivered by ABILITY; (ii) Customer certifies that all copies of the returned Software have been destroyed; and (iii) examination of Software by ABILITY discloses that such deficiencies actually existed. The foregoing states Customer's sole and exclusive remedy and ABILITY's sole and exclusive liability for breach of warranty.

b) THE FOREGOING WARRANTIES FOR THE SOFTWARE ARE IN LIEU OF ALL CONDITIONS OR WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ON THE PART OF ABILITY AND ITS SUPPLIERS. ABILITY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. ALL THIRD PARTY SOFTWARE IS PROVIDED WITHOUT WARRANTY OF ANY KIND AND CUSTOMER IS RESPONSIBLE FOR THE ENTIRE RISK WITH RESPECT TO ITS QUALITY AND PERFORMANCE.

10. LIMITATION OF LIABILITY. IN NO EVENT SHALL ABILITY OR ITS SUPPLIERS BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF USE OR DATA, OR INTERRUPTION OF BUSINESS, WHETHER SUCH DAMAGES ARE LABELED IN TORT, CONTRACT, OR INDEMNITY, EVEN IF ABILITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ABILITY'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE LICENSE FEES PAID TO ABILITY FOR THE SOFTWARE.

11. U.S. GOVERNMENT RIGHTS. If Customer is the U.S. Government or an agency thereof, Customer agrees: (a) with respect to civilian agencies, to grant protection for the Software as "commercial computer software" and related documentation in accordance with the terms of this commercial computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (b) for use by or on behalf of the Department of Defense ("DoD"), to grant protection for the Software as "commercial computer software" and related documentation in accordance with the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-1 of the DoD FAR Supplement and its successors.

12. EXPORT. Customer will not, directly or indirectly, export or re-export, or knowingly permit the export or re-export of the Software to any country for which the United States Export Administration Act, or any similar United States law or regulation requires an export license or other U.S. Government approval, unless the appropriate export license or approval has first been obtained.

13. NOTICES. Unless otherwise specified in this Agreement, all notices, requests, demands and other communications (other than routine operational or administrative communications) required or permitted under this Agreement shall be deemed to have been delivered to a party at the address indicated in the Order Form: (a) when actually received in the case of hand delivery as evidenced by a signed receipt or applicable Order Form; (b) the business day after being given to a reputable overnight courier service, with a reliable system for tracking delivery, for delivery the following day; (c) when sent by confirmed facsimile with a copy sent by United States mail within two (2) business days of the transmission; (d) upon receipt, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid; or (e) upon receipt when sent via email with a S/MIME receipt request. A party may from time to time change its address, facsimile number or designee for notification purposes by giving the other party prior written notice of the new address, facsimile number or designee and the date upon which such change will become effective.

14. CHOICE OF LAW, DISPUTE RESOLUTION, VENUE. This Agreement is governed by the laws of the State of Minnesota without regard to its conflict of laws rules and principles. The United Nations Convention on Contracts for the International Sale of Goods will not govern this Agreement. In the event of a dispute arising out of the Software, this Agreement, any document executed pursuant to this Agreement or any of the transactions contemplated by this Agreement

("Dispute" or "Disputes"), any Dispute not resolved under the terms of this Agreement shall be submitted to arbitration before an arbitration panel of three (3) arbitrators in accordance with the rules then prevailing of the American Arbitration Association. The AAA shall appoint the panel, with at least one (1) arbitrator having knowledge of and experience in dealing with the computer software industry. All arbitration shall take place in Hennepin County, Minnesota. The award of the arbitrators shall be binding and may be entered as a judgment in any court of competent jurisdiction. The exclusive jurisdiction for all Disputes that are not resolved under the preceding Sections shall be in either a federal or state court located in Hennepin County, Minnesota, and each party will submit to the personal jurisdiction of such courts and waive any objection of lack of personal jurisdiction or inconvenient forum. Customer will reimburse ABILITY for all attorneys' fees and costs ABILITY incurs in enforcing any of its rights arising out of or relating to this Agreement.

15. NO LIMITATION. Nothing in this Agreement shall, or is intended to, limit the ability of ABILITY to develop or enhance its Service in any manner whatsoever, including use of knowledge gained as a result of the performance by ABILITY of its obligations hereunder, provided that ABILITY does not use or disclose Customer's confidential information identified as such by Customer in writing.

16. BINDING UPON SUCCESSORS; ASSIGNMENT. This Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto. However, Customer may not effect an assignment of this Agreement without ABILITY's prior written consent. Any such purported assignment of this Agreement without obtaining written consent shall be void and of no effect and shall permit ABILITY to terminate this Agreement pursuant to Section 7.

17. SEVERABILITY; ENFORCEMENT; NO WAIVER. The unenforceability of any provision or provisions of this Agreement shall not impair the enforceability of any other part of this Agreement. If any provision of this Agreement shall be deemed invalid or unenforceable, in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the invalid or unenforceable provision to render it valid, enforceable, and, insofar as possible, consistent with the original intent of the parties. The failure of a party, at any time or from time to time, to require performance of any obligations of the other party hereunder shall not be deemed a waiver and shall not affect its right to enforce any provision of this Agreement at a subsequent time.

18. INDEMNIFICATION.

a) Customer shall defend, indemnify, and hold harmless ABILITY and third party licensors from and against any claims, loss, liability, or damages (including reasonable attorneys' fees) arising out of Customer's use of the Software, including any improper disclosure of protected health information.

b) ABILITY shall defend, indemnify, and hold harmless Customer from and against any claims (including reasonable attorneys' fees) arising out of Customer's proper operation or use of the Software alleging that Customer's use of the Software infringes patent, copyright, or trademark rights or is a misappropriation of trade secrets. Customer shall provide ABILITY prompt notice of any such claim and ABILITY shall have the right to assume the defense thereof. In the event Customer's use of the Software is determined by ABILITY to be likely to be enjoined, ABILITY shall, at its option, modify the Software so that it is non-infringing, replace the Software or terminate this Agreement.

19. INDEPENDENT PARTIES. The relationship of ABILITY and Customer is that of independent contractors. Neither party nor their employees, consultants, contractors or agents are agents, employees or joint ventures of the other party, nor do they have any authority to bind the other party by contract or otherwise to any obligation.

20. COMPLETE AGREEMENT. The parties agree that this Agreement constitutes the complete and exclusive agreement between them and supersedes all proposals, oral or written, all other communications between them relating to the subject matter of this Agreement.