

ACCUMED™

STANDARD TERMS AND CONDITIONS

This document sets out the standard terms and conditions (“*Terms*”) that apply to the software licensed by Accumedic Computer Systems, Inc. (“*Accumedic*”) to Customer pursuant to the Work Order. Accumedic and Customer may be referred to herein collectively as the “*Parties*” or individually as a “*Party*.”

1. DEFINITIONS

In addition to any terms defined in the text of these Terms, the following terms shall have the following meaning:

“*AccuMed Cloud*” means a software as a service (SaaS) arrangement for the Software, which is contrasted from AccuMed CS.

“*AccuMed CS*” means a client server local installation of the Software, which is contrasted from AccuMed Cloud.

“*Agreement*” means the entire agreement between Accumedic and Customer relating to the Software, which includes the Work Order, any addendum thereto, and these Terms, and is made effective upon execution of the Work Order. Use of the terms “hereunder,” “hereby,” “hereof” or “herein” in the Work Order, any addendum thereto, or these Terms refer to the Agreement as a whole and not the Work Order, any addendum thereto, or these Terms, as the case may be, exclusively.

“*Authorized User*” means an employee or contractor of Customer who Customer permits to use the Software and/or Documentation pursuant to the Agreement, and for whom use has been purchased hereunder.

“*Customer*” means the customer indicated on the Work Order.

“*Data*” means information or data (in each case, in any form or medium): (a) pertaining to Customer or an Authorized User; or (b) arising from or related to Customer’s or an Authorized User’s use of the Software (including, without limitation, information or data pertaining to an individual or subject arising from or related to Customer’s or an Authorized User’s use of the Software). Without limiting the generality of the foregoing, “*Data*” includes, without limitation, information or data: (i) created, entered, collected, stored, processed or provided by or on behalf of Customer or an Authorized User; (ii) residing in or accessed or transmitted by or through the Software; or (iii) contained in reports or other derivative materials, whether or not generated by the Software. For the avoidance of doubt, “*Data*” does not include the Software or Documentation.

“*Documentation*” means Accumedic’s end user documentation and specifications relating to the Software, which may be updated from time to time.

“*Effective Date*” means the date of execution of the Work Order.

“*Enhancements*” means New Versions and Updates collectively.

“*Error*” means a failure of the Software to perform in substantial conformity with the Documentation that is reproducible by Accumedic.

“*New Version*” means any major functional revision to the Software (designated by a renumbered release number such as 4.1 to 5.0).

“*Software*” means Accumedic’s proprietary computer software as specified on the Work Order, including all Enhancements,

modifications and customization made thereto, together with such additional software as the Parties may from time to time agree in writing to add to the Work Order. Customer’s version of the Software, which can be either AccuMed CS or AccuMed Cloud (but not both), is set forth on the Work Order.

“*Support Times*” means Accumedic’s normal business hours which are in effect from time to time, which are generally Monday through Friday from 9:00AM to 5:00PM EST, excluding days that Accumedic is closed for business.

“*Update*” means any minor release, update, modification or “bug fix” (designated by a renumbered release number such as 4.0 to 4.1) which does not necessarily provide materially new functionality, as determined by Accumedic in its sole discretion, and made generally available to Accumedic’s supported customers.

“*Work Order*” means that certain Work Order(s) (and any addenda thereto) executed between the Parties, which binds the Parties to the Agreement.

2. ACCESS AND USE

2.1 License Grant / Provision of Access.

(a) *AccuMed CS*. This Section 2.1(a) applies to AccuMed CS only. Subject to and conditioned on Customer’s timely payment of Fees and compliance with the Agreement, Accumedic hereby grants Customer a non-exclusive, non-sublicenseable, and non-transferable license during the Term to use the Software solely for Customer’s internal business purposes solely in the United States of America up to the number of Authorized Users set forth on the Work Order. Customer may make one copy of the Software solely for back-up purposes. Any such copy of the Software: (i) remains Accumedic’s exclusive property; (ii) is subject to the terms and conditions of the Agreement; and (iii) must include all copyright or other proprietary rights notices contained in the original.

(b) *AccuMed Cloud*. This Section 2.1(b) applies to AccuMed Cloud only. Subject to and conditioned on Customer’s timely payment of Fees and compliance with the Agreement, Accumedic hereby grants Customer a non-exclusive and non-transferable right to access and use the Software during the Term solely for Customer’s internal business purposes solely in the United States of America up to the number of Authorized Users set forth on the Work Order. Accumedic shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Software.

(c) *Documentation*. Subject to and conditioned on Customer’s timely payment of Fees and compliance with the Agreement, Accumedic hereby grants Customer a non-exclusive, non-sublicenseable, non-transferable license to use the Documentation during the Term solely for Customer’s internal business purposes solely in the United States of America in connection with its use of the Software.

2.2 *Use Restrictions*. Customer shall not use or access the Software or Documentation for any purposes beyond the specific license grant or access right, as applicable, set forth in Section 2.1. Without limiting the foregoing and except as otherwise expressly set forth herein, Customer shall not at any time, directly or indirectly: (a) copy, modify, or create derivative works of the

Software or Documentation, in whole or in part; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or Documentation; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (d) remove any proprietary notices from the Software or Documentation; (e) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (f) engage in any simultaneous use of the Software that exceeds the number of licenses purchased; (g) use the Software in connection with any fraudulent or illegal activities; or (h) engage in any other use or form of access that is contrary to the Agreement or any limitation set forth herein. For the avoidance of doubt, the total number of Authorized Users shall not exceed the number set forth on the Work Order, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder.

2.3 Reservation of Rights. Accumedic reserves all rights not expressly granted to Customer herein.

2.4 Delivery & Acceptance. This Section 2.4 applies to AccuMed CS only. Accumedic and Customer shall agree on an estimated date for delivery of the Software to Customer's site. The actual date the Software is installed at Customer's site shall be the "Installation Date."

(a) The Software shall be deemed accepted by Customer if either: (i) Customer notifies Accumedic in writing of its acceptance; (ii) Customer fails to notify Accumedic in writing within five days after installation of the Software of any material non-conformity and the Acceptance Date shall then be the last day of said period; or (iii) Customer places the Software, or any part or module thereof, in productive use (subject to Section 2.4(b)), the date an event described in subclauses (i), (ii) or (iii) above first takes place, the "Acceptance Date"). Notwithstanding the foregoing (and subject to Section 2.4(b)), if none of the events described in subclauses (i), (ii) or (iii) above takes place within thirty days past the Installation Date, the Acceptance Date shall be the date thirty days past the Installation Date.

(b) Customer shall immediately, but in no event more than five days after installation of the Software, notify Accumedic in writing of all non-conformities in the Software that have been identified by Customer. Such non-conformities shall be limited to material failures of the Software to conform to the Documentation. Upon receipt of such written notice, Accumedic shall use efforts it deems, in its sole discretion, to be reasonable to remedy those defects that Accumedic determines, in its sole discretion, are material non-conformities from the Documentation. The Software shall be deemed accepted by Customer upon the remedy of such defects and the date of such acceptance shall be the Acceptance Date. In the event that Accumedic fails to remedy such defects, Customer's sole and exclusive remedy shall be to return to Accumedic the non-conforming Software and receive a refund of any amounts already paid for such Software (exclusive of any professional fees and/or expenses paid or owed). The procedure set forth in this Section is the exclusive means by which Customer shall be entitled to reject the Software, or any part thereof, and sets forth the exclusive remedy of Customer for such non-acceptance.

2.5 Suspension. Notwithstanding anything to the contrary herein and in addition to any other rights set forth herein, Accumedic shall have the right, in its sole discretion, to (a) remotely disable, suspend and/or otherwise discontinue

Customer's and/or any Authorized User's access to any portion or all of the Software and/or (b) instruct Customer to immediately cease all use of and other activities with respect to the Software, and Customer shall be required to immediately cease use (either (a) or (b), a "Suspension"): (i) if Accumedic reasonably determines that (A) there is a threat or attack on the Software; (B) Customer's use of the Software disrupts or poses a security risk to the Software or to any other customer of Accumedic; or (C) Customer may breach or has breached any of its obligations under Section 2.2; or (ii) in accordance with Section 5.1. Accumedic shall resume providing access to the Software, or shall inform Customer it may resume use of the Software, as applicable, at such time Accumedic deems appropriate in its sole discretion, but in no event earlier than such time that the event giving rise to the Suspension is cured. Accumedic shall not be responsible for any damage, liabilities, losses, or any other consequences that Customer or any Authorized User may incur as a result of a Suspension.

3. CUSTOMER RESPONSIBILITIES

3.1 General. Customer shall be exclusively responsible and liable for all uses of the Software and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of the Agreement. Without limiting the generality of the foregoing, Customer shall be solely responsible for all acts and omissions of Authorized Users and any individual who interacts with the Software using a username or password issued to Customer or Authorized Users, whether or not the username or password was obtained involuntarily, negligently, or unlawfully. Customer shall take reasonable efforts to make all Authorized Users aware of the Agreement's provisions as applicable to such Authorized User's use of the Software and Documentation, and shall cause Authorized Users to comply with such provisions. Customer shall provide all cooperation and assistance reasonably requested by Accumedic, including with respect to support services, and implementation and development of the Software; failure by Customer to provide any such cooperation or assistance shall be deemed a material breach hereunder.

3.2 Additional. Customer shall be exclusively responsible for the supervision, management and control of its access and use of the Software and the operating environment, including, without limitation: (a) assuring proper audit controls and operating methods; (b) establishing adequate back-up plans in the event of a Software or hardware malfunction, including restart and recovery procedures; (c) implementing sufficient procedures and checkpoints to satisfy its requirements for security and accuracy of input and output; (d) maintaining the proper and up-to-date operating environment for the Software; and (e) ensuring that all Authorized Users comply with the terms of the Agreement. Customer shall be exclusively responsible for: (i) all Data, including, without limitation, its accuracy, content and use, and security with respect thereto; and (ii) all other information, instructions and materials created, entered, collected, stored, processed or provided by or on behalf of Customer or any Authorized User in connection with use of the Software. With respect to AccuMed CS, Customer shall install all Enhancements as soon as reasonably possible from the date they are made available by Accumedic.

3.3 Support Responsibilities.

(a) Access. Customer shall provide Accumedic with access to Customer's hardware, network and systems that maintain the Software to the extent necessary, in Accumedic's sole discretion,

to enable Accumedic to meet its support obligations set forth herein.

(b) Communications Link. Customer shall provide remote access to Accumedic via the Internet or as otherwise reasonably requested by Accumedic and bear all costs associated with procuring, installing, and maintaining all equipment and communications interfaces necessary for Customer to obtain support. Accumedic shall be entitled to use this remote access to perform all of its support obligations under the Agreement. Accumedic shall not be responsible if Accumedic's ability to render support is impaired by Customer's inability to provide the functionality required for remote support.

(c) Support Contact. On the Effective Date, or as soon as reasonably possible thereafter, Customer shall designate in writing to Accumedic one employee and one alternate as its "Support Contacts" to be generally available during the Support Times to confer with Accumedic regarding Errors and other support-related issues. Customer shall ensure its Support Contacts have the requisite organizational authority, skill, experience, and other qualifications to perform these duties. Customer shall use reasonable efforts to maintain the same Support Contacts in place throughout the Term, and shall notify Accumedic immediately of any changes in the persons designated as Support Contacts. Accumedic shall provide technical support to Customer's Support Contacts only.

(d) Information. Customer shall provide Accumedic with all information reasonably requested by Accumedic from time to time relating to Customer's use of or access to the Software, including information on Customer's hardware, network and systems.

(e) Language. Customer shall communicate with Accumedic in the English language only.

(f) Support Logging. Customer shall log each support request on Accumedic's technical support website notwithstanding whether Customer also utilizes Accumedic's telephonic Help Desk with respect to such support request.

3.4 Non-Solicitation. During the Term and for three years after, Customer shall not, and shall not assist any other person to, directly or indirectly recruit or solicit any Accumedic employee or contractor without Accumedic's prior written consent.

4. SUPPORT

4.1 Support Services. During the Term, subject to and conditioned on Customer's timely payment of Fees and compliance with the Agreement, Accumedic shall render the following support services to Customer:

(a) Help Desk. Accumedic shall provide Customer with reasonable help desk assistance during the Support Times regarding the installation and implementation of the Software, and the identification, diagnosis and correction of Errors.

(b) Website. Accumedic shall provide Customer with access to applicable technical information with respect to the Software via Accumedic's technical support website.

(c) Enhancements. Accumedic shall provide Customer with access to Enhancements as set forth on the Work Order, each of which constitutes Software and is subject to the terms and conditions of the Agreement.

(d) Error Correction Services. Accumedic shall provide Customer with reasonable Error correction services as follows:

(i) Notification. To obtain Error correction services, Customer must notify Accumedic immediately of any suspected Error and must provide Accumedic with reasonable detail of the nature of and circumstances surrounding the Error. "Reasonable detail" includes complete software, hardware and network configuration information and any other information reasonably requested by Accumedic.

(ii) Remote Diagnostics. Accumedic shall perform remote diagnostics of Customer's applicable systems to determine the existence and nature of an Error.

(iii) Error Correction. Accumedic shall make reasonable efforts to correct and resolve Errors that Customer reports to Accumedic. In connection with the foregoing, Customer shall cooperate with and provide reasonable assistance to Accumedic, and promptly provide Accumedic with all information requested by Accumedic that Accumedic determines in its sole discretion to be necessary to correct and resolve Errors. For each Error, Accumedic shall use reasonable efforts to provide Customer with a work-around, a software patch or, if Accumedic is unable to provide Customer with either of the foregoing, a specific action plan for addressing the Error, including an estimate of the time required to address such Error.

4.2 Response Times. For Errors that Customer reports to Accumedic during the Support Times, Accumedic shall use reasonable efforts to communicate with Customer by telephone, e-mail, facsimile or Accumedic's technical support website within the targeted response times listed in the table below. For purposes of the Agreement, a "response" means Accumedic's acknowledgment of a reported Error, and does not necessarily mean that a resolution will be achieved at the time of such response:

<u>Priority</u>	<u>Error Description</u>	<u>Target Response</u>
1	<i>Fatal (Software not operational):</i> Priority 1 incidents should be initiated by a telephone call to Accumedic's support staff.	24 hours
2	<i>Severe Impact (functionality disabled):</i> Errors that result in a lack of Software functionality or that cause intermittent system failure.	24 hours
3	<i>Degraded Operations:</i> Errors that cause non-critical Software features to malfunction consistently.	48 hours
4	<i>Minimal Impact:</i> Errors that cause attributes and/or optional modules of Software not to operate in accordance with the Documentation.	1 week

4.3 Limitations on Support Obligations. Notwithstanding anything to the contrary herein, Accumedic shall have no obligation to provide support services to Customer if: (a) such support relates to or involves any products, features, devices or equipment not provided by Accumedic; (b) Customer or a third party has altered or modified any portion of the Software in any manner without the prior written consent of Accumedic; (c) Customer has failed to install or use the Software in accordance with instructions provided by Accumedic, including failure to follow implementation procedures; (d) Customer has failed to replace earlier versions of the Software with Enhancements provided to Customer; (e) a party other than Accumedic (or a party authorized by Accumedic) has serviced the Software; or (f) Customer is not in compliance with all of its

obligations set forth herein. Notwithstanding anything to the contrary herein, Accumedic reserves the right, at any time, to cease providing Customer maintenance or support for certain functionalities or portions of the Software if Accumedic determines in its sole discretion that providing such maintenance or support is not in the best interest of Accumedic, provided that Accumedic terminates such maintenance or support for all of its customers.

4.4 Hardware. Accumedic's support obligations under the Agreement shall not include computer hardware, computer network, electrical, telephone, interconnection, or the installation or repair of accessories, alterations, parts or devices not furnished by Accumedic. To the extent hardware is provided by Accumedic, Customer agrees that support services for such hardware shall be provided by the original manufacturer of such hardware and not Accumedic.

4.5 Additional Services. In its discretion, Accumedic may provide Customer with additional support services for the Software not otherwise covered in Section 4.1, provided that Customer pays Accumedic for such service at Accumedic's then-current hourly and expense reimbursement rates or as otherwise agreed between the Parties in writing.

5. FEES AND PAYMENT

5.1 Fees. Customer shall pay Accumedic the fees ("*Fees*") set forth on the Work Order. Customer shall make all payments hereunder in U.S. dollars in accordance with the terms set forth on the Work Order. In addition, Customer shall pay to Accumedic any out-of-pocket expenses incurred in performance of the Agreement by Accumedic, including, without limitation, transportation costs and other expenses related to services provided by Accumedic personnel at Customer's site. Customer shall pay all invoiced amounts in U.S. dollars within thirty days of the date of invoice. If Customer fails to make any payment when due, in addition to all other remedies that may be available: (a) Accumedic shall charge interest at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; and (b) Customer shall reimburse Accumedic for all reasonable costs incurred by Accumedic in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees. Notwithstanding above and in addition to any other rights set forth herein, if Customer fails to pay any amount when due in accordance with the terms of the Agreement, Accumedic shall have the right, in its sole discretion, to (i) initiate a Suspension; (ii) cease providing any or all support services; or (iii) terminate the Agreement. All amounts payable to Accumedic under the Agreement shall be paid by Customer to Accumedic in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason. For AccuMed Cloud, notwithstanding anything to the contrary herein, (A) all payments hereunder are required to be made by automated electronic funds transfer ("*EFT*"); and (B) on or promptly following the Effective Date, Customer shall provide all information and execute any documentation necessary to effect such EFT payment processing for the duration of the Term.

5.2 Taxes. All Fees and other amounts payable by Customer under the Agreement are exclusive of taxes and similar assessments. Unless otherwise set forth on the Work Order, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Accumedic's income.

6. CONFIDENTIAL INFORMATION

6.1 From time to time, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "*Confidential Information*"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required: (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under the Agreement. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in a signed written instrument to the disclosing Party that such Confidential Information has been destroyed. Except as provided in this Section 6.1, neither Party shall disclose any terms of the Agreement to any third party other than to its attorneys, accountants and other professional advisors under a duty of confidentiality.

6.2 Customer shall not sell, transfer, publish, disclose, display or otherwise make available any portion of the Software or Documentation or any other sensitive or proprietary information of Accumedic related thereto to others, and the foregoing is expressly deemed Confidential Information. Customer agrees to hold such Confidential Information in strict confidence and safeguard it from unauthorized access, misuse, disclosure, duplication, infringement, misappropriation or theft using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care, and to take appropriate action by instruction or agreement with any person who is permitted access to such Confidential Information to satisfy the obligations set forth herein. Customer shall use its best efforts to assist Accumedic in identifying and preventing any unauthorized access, misuse, disclosure, duplication, infringement, misappropriation or theft of such Confidential Information or any portions thereof. In furtherance of and not in limitation of the foregoing, Customer shall promptly notify Accumedic if Customer: (a) becomes aware of any actual or suspected infringement, misappropriation or other violation of Accumedic's intellectual property rights in or relating to such Confidential Information; or (b) learns or has reason to believe that any person to whom Customer has given access to such Confidential Information, or any portion thereof, has violated or intends to violate the terms of the Agreement.

7. INTELLECTUAL PROPERTY OWNERSHIP; FEEDBACK

7.1 IP Ownership. Customer agrees that, as between Customer and Accumedic, Accumedic owns all right, title, and interest, including all intellectual property rights, in and to the Software and Documentation. The Agreement does not provide Customer with any title, interest or ownership in or any right to use Accumedic's name, trademarks (including AccuMed™) or logo, or any goodwill now or hereafter associated therewith, all of which title, interest, ownership and goodwill is the property of and shall inure exclusively to the benefit of Accumedic. Except for the limited licenses and rights expressly granted under the Agreement, nothing herein grants, by implication, waiver, estoppel or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Software or Documentation.

7.2 Feedback. If Customer or any of its Authorized Users, employees, agents, representatives or contractors sends or transmits any communications or materials to Accumedic by mail, email, telephone, or otherwise, suggesting or recommending changes to the Software or Documentation, including, without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Accumedic is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Accumedic on Customer's behalf, and on behalf of its Authorized Users, employees, agents, representatives and contractors, all right, title, and interest in, and Accumedic is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Accumedic is not required to use any Feedback.

8. LIMITED WARRANTIES AND WARRANTY DISCLAIMER

8.1 With respect to AccuMed CS only, Accumedic warrants that the Software will perform materially as described in the Documentation for a period of thirty days following the Acceptance Date. With respect to AccuMed Cloud only, Accumedic warrants that the Software will perform materially as described in the Documentation for a period of thirty days following the Effective Date.

8.2 The applicable warranty set forth in Section 8.1 does not apply and becomes null and void if Customer breaches any provision of the Agreement, or if Customer, any Authorized User, or any other person provided access to the Software by Customer or any Authorized User, whether or not in violation of the Agreement: (a) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by Accumedic; (b) modifies or damages the Software; or (c) misuses the Software, including any use of the Software other than as specified in the Documentation.

8.3 If, during the applicable period specified in Section 8.1, the Software fails to comply with the applicable warranty in Section 8.1, and such failure is not excluded from warranty pursuant to Section 8.2, Accumedic shall, subject to Customer's promptly notifying Accumedic in writing of such failure, at its sole option, either: (a) repair or replace the Software, provided that Customer provides Accumedic with all information Accumedic requests to resolve the reported failure, including sufficient information to enable Accumedic to recreate such failure; or (b) refund the Fees

paid for such Software, subject to Customer's ceasing all use of and, if requested by Accumedic, returning to Accumedic all copies of the Software and Documentation. If Accumedic repairs or replaces the Software, the warranty will continue to run from, in the case of AccuMed CS, the Acceptance Date, and in the case of AccuMed Cloud, the Effective Date, and not from Customer's receipt of the repair or replacement. The remedies set forth in this Section 8.3 are Customer's sole remedies and Accumedic's sole liability under the limited warranty set forth in Section 8.1.

8.4 EXCEPT FOR THE APPLICABLE LIMITED WARRANTY SET FORTH IN SECTION 8.1, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND ACCUMEDIC HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. ACCUMEDIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE APPLICABLE LIMITED WARRANTY SET FORTH IN SECTION 8.1, ACCUMEDIC MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE AND DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ACCUMEDIC DOES NOT WARRANT THAT ALL ERRORS WILL BE CORRECTED OR CAPABLE OF CORRECTION.

9. INDEMNIFICATION

9.1 Accumedic's Obligation. Subject to Sections 9.2 and 9.3, Accumedic shall defend and/or settle at its own expense any action brought against Customer by a third party, to the extent that such action is based upon a claim that the Software infringes any patents or copyrights or misappropriates third-party trade secrets. Accumedic shall pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim, or those costs and damages agreed to in a monetary settlement of such claim. The foregoing obligations are conditioned on: (a) notifying Accumedic promptly in writing of such action; (b) giving Accumedic sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at Accumedic's request and expense, assisting in such defense. Accumedic shall not reimburse Customer for any expenses incurred by Customer without the prior written approval of Accumedic. Customer may also participate in the defense at its own expense.

9.2 Option. If the Software becomes, or in Accumedic's opinion is likely to become, the subject of an infringement claim that Accumedic is required to defend pursuant to Section 9.1, then Accumedic may (at its option and expense) either: (a) procure for Customer the right to continue using the affected Software; or (b) replace or modify the affected Software so that it becomes non-infringing. If neither of the foregoing options is commercially feasible, as determined in Accumedic's sole discretion, then Accumedic may terminate Customer's rights to use the affected Software and refund Customer an amount equal to the Fees Customer paid for such Software for the three month

period prior to the termination. SECTIONS 9.1 AND 9.2 STATE ACCUMEDIC'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS AND ACTIONS RELATED TO INFRINGEMENT, MISAPPROPRIATION OR VIOLATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

9.3 Exclusions. Notwithstanding the foregoing, Accumedic shall have no obligation under this Section 9 or otherwise with respect to any infringement claim resulting from or related to: (a) any use of or access to the Software not in accordance with the Agreement or its Documentation or in any manner contrary to Accumedic's instructions; (b) any use of the Software in combination with software, hardware, equipment, or technology not provided by Accumedic or authorized by Accumedic; (c) any modifications to the Software not made by Accumedic; (d) any use of any version other than the most current version of the Software; (e) negligence, abuse, misapplication, or misuse of the Software or Documentation; or (f) any use of the Software after Accumedic has either made available to Customer a release that would have overcome the infringement or has terminated Customer's right to use the Software pursuant to Section 9.2. In the event that a claim is filed against Accumedic based on one of the above exclusions, Customer shall defend, indemnify and hold harmless Accumedic against all liability, damages and costs resulting from or related to such a claim.

10. LIMITATIONS OF LIABILITY

10.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS OR OTHER INACCURACIES IN THE SOFTWARE OR DOCUMENTATION; OR (e) COST OF REPLACEMENT SOFTWARE, IN EACH CASE REGARDLESS OF WHETHER THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT SHALL ACCUMEDIC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY EXCEED THE TOTAL AMOUNTS PAID TO ACCUMEDIC UNDER THE AGREEMENT IN THE NINE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE LIMITATIONS OF THIS SECTION 10 SHALL NOT APPLY TO OR OTHERWISE LIMIT THE BREACH OF THE OBLIGATIONS UNDER SECTIONS 2.2, 3.1, 3.2, 3.4, 6 and 7.1. THE PARTIES ACKNOWLEDGE THAT THIS SECTION 10 REFLECTS THE AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES, THAT NEITHER PARTY WOULD ENTER THE AGREEMENT WITHOUT THESE PROVISIONS, AND NO OTHER CLAUSE REGARDING LIMITATION ON LIABILITY SHALL CONTROL NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY OTHER DOCUMENT. THIS LIMITATION ON LIABILITY SHALL APPLY DESPITE THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY SET FORTH HEREIN.

10.2 Customer acknowledges that: (a) Accumedic does not provide medical advice or diagnostic services, or prescribe medication; and (b) use of the Software is not a substitute for the professional judgment of health care providers in diagnosing and treating patients. Customer agrees that it is solely responsible for verifying the accuracy of all Data, and for all decisions, actions and omissions with respect to Data, patient care, treatment, and well-being of patients. Any use of or reliance on the Software shall not diminish those responsibilities. FOR THE AVOIDANCE OF DOUBT, CUSTOMER ASSUMES ALL (AND ACCUMEDIC DISCLAIMS ALL) RISK, RESPONSIBILITY AND LIABILITY DIRECTLY OR INDIRECTLY ARISING FROM OR RELATED TO: (i) DATA IN ANY MANNER WHATSOEVER, WHETHER OR NOT FORESEEABLE; AND/OR (ii) USE OF OR ACCESS TO THE SOFTWARE IN CONNECTION WITH PATIENT CARE OF ANY KIND, INCLUDING, WITHOUT LIMITATION, IN THE EVENT THAT THE SOFTWARE OR DATA OR ANY REPORT OR INFORMATION GENERATED BY THE SOFTWARE IS USED IN CONNECTION WITH PATIENT CARE. FURTHER, ACCUMEDIC SHALL NOT BE RESPONSIBLE OR LIABLE FOR DAMAGE, INJURY (INCLUDING DEATH) OR LOSS TO ANY PARTY OR TANGIBLE PROPERTY ARISING FROM OR RELATED TO USE OF OR ACCESS TO THE SOFTWARE, IRRESPECTIVE OF WHETHER SUCH DAMAGE, INJURY (INCLUDING DEATH) OR LOSS RESULTS FROM CUSTOMER'S USE OF OR ACCESS TO THE SOFTWARE.

11. TERM AND TERMINATION

11.1 Term. The initial term of the Agreement begins on the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, shall continue in effect for five years or as otherwise specified on the Work Order (the "Initial Term"). The Agreement shall automatically renew for additional successive one year term(s) unless earlier terminated pursuant to the Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least thirty days prior to the expiration of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term"). The Fees for each Renewal Term shall be automatically adjusted by Accumedic to Accumedic's then-current pricing for the Software.

11.2 Termination. In addition to any other express termination right set forth herein:

(a) Accumedic may terminate the Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder; or (ii) breaches any of its obligations under Sections 2.2, 3.1, 3.4, 6 or 7.1;

(b) either Party may terminate the Agreement, effective on written notice to the other Party, if the other Party materially breaches the Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured twenty days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(c) either Party may terminate the Agreement, effective on written notice to the other Party, if the other Party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding.

11.3 Effect of Expiration or Termination. Upon expiration or earlier termination of the Agreement, (a) all licenses and access rights granted hereunder shall also terminate, and, without

limiting Customer's obligations under Section 6, Customer shall (i) immediately cease all use of and other activities with respect to the Software and Documentation; (ii) within fifteen days deliver to Accumedic, or at Accumedic's written request, destroy and permanently erase from all devices and systems Customer directly or indirectly controls, the Software, the Documentation and any other Confidential Information of Accumedic, including all documents, files, and tangible materials (and any partial and complete copies) containing, reflecting, incorporating, or based on any of the foregoing, whether or not modified or merged into other materials; and (iii) certify to Accumedic in a signed written instrument that it has complied with the requirements of this Section 11.3; and (b) all amounts payable by Customer to Accumedic of any kind are immediately payable and due no later than fifteen days after the effective date of the expiration or termination of the Agreement. In furtherance of and not in limitation of the foregoing, Accumedic shall have the right to remotely disable, suspend and/or otherwise discontinue Customer's and any (or all) Authorized User's access to any portion or all of the Software upon expiration or termination. For the avoidance of doubt, no expiration or termination shall affect Customer's obligation to pay all Fees and other amounts that have become due before such expiration or termination or entitle Customer to any refund.

11.4 Survival. This Section 11.4 and Sections 1, 3.1, 3.2, 3.4, 5, 6, 7, 8.4, 9, 10, 11.3, and 12 survive any termination or expiration of the Agreement. No other provisions of the Agreement survive the expiration or earlier termination of the Agreement.

12. MISCELLANEOUS

12.1 Entire Agreement. The Agreement, which includes the Work Order, any addendum thereto, and these Terms, constitutes the sole and entire agreement of the Parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made on the Work Order and these Terms, the terms of the Work Order shall prevail.

12.2 Customer Acknowledgment. Customer acknowledges that: (a) the Agreement is comprised of the Work Order (including any addendum thereto) and these Terms and is made effective by execution of the Work Order; (b) Customer has read these Terms and the Work Order (including any addendum thereto) and understands and agrees to be bound by all such terms; and (c) execution of the Work Order creates the Agreement and binds Customer to all terms set forth therein (including any addendum thereto) and in these Terms.

12.3 Notices. All notices under the Agreement must be delivered in writing by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail to the other Party at the address set forth on the Work Order and will be effective upon receipt or three business days after being deposited in the mail as required above, whichever occurs sooner. Either Party may change its address by giving written notice of the new address to the other Party.

12.4 Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached the Agreement, for any failure or delay in performing its obligations under the Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control.

12.5 Amendment and Modification; Waiver. No amendment to or modification of the Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth herein, (a) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Agreement will operate or be construed as a waiver thereof; and (b) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

12.6 Severability. If any provision of the Agreement is adjudicated to be unenforceable, such provision shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions shall continue in full force and effect.

12.7 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2.2, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

12.8 Governing Law; Arbitration. The laws of the State of New York shall govern the Agreement for all purposes. Any dispute arising out of or related to the Agreement shall be resolved by binding, final, and non-appealable arbitration conducted in Nassau County, New York in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, with respect to matters for which a Party seeks equitable relief, such Party may bring such action exclusively in the federal courts in the Eastern District of New York or the courts of the State of New York located in Nassau County, New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such action.

12.9 Assignment. Customer may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Accumedic. Any change in control of Customer, whether direct or indirect, shall be deemed an assignment or transfer for purposes of the Agreement that requires Accumedic's prior written consent. Any purported assignment, transfer, or delegation in violation of this Section 12.9 is null and void. No assignment, transfer, or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder. The Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

12.10 Section Headings. Captions and Section headings contained in these Terms are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of the Agreement.

12.11 Counterparts. The Work Order may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same Agreement.