

## SOFTWARE SUBSCRIPTION AND SUPPORT AGREEMENT

THIS SOFTWARE SUBSCRIPTION AND SUPPORT AGREEMENT (the "Agreement") is made as of this 1st day of January, 2018 (the "Effective Date") by and between Albany County Department of Mental Health ("Client") and IMA Systems LLC, a New York limited liability company ("IMA"). Each of IMA and Client may hereinafter be referred to, individually, as a "Party" or, collectively, the "Parties."

WHEREAS, IMA is the owner of a suite of software modules known as the imaServe, which provides users thereof a single interface for performing the clinical, financial and administrative functions associated with rendering behavioral health care services; and

WHEREAS, Client is a division of Albany County, which previously subscribed for the Application (defined below); and

WHEREAS, Client now desires to separately subscribe for its own license for the Application, and IMA is willing to provide same, on the terms and conditions set forth herein, which are intended to replace any prior agreements, understandings, purchase orders or other documents related to Client's use of and subscription for the Application.

NOW THEREFORE, in consideration of the covenants and agreements contained herein and for other good and valuable consideration the receipt and sufficiency of which is acknowledged hereby, the Parties agree as follows:

### **Section 1: Application and Subscription.**

1.1 **Installation.** Client acknowledges that IMA has previously provided and installed imaServe, as described in greater detail in Exhibit A hereto (the "Application"), on the Application Server (as defined below) and operating system established and maintained by Client.

#### 1.2 **Subscription.**

a. *Access Rights.* IMA hereby grants to Client, and Client hereby accepts from IMA, a limited, non-exclusive, non-transferable right and license, without right of sublicense (the "Access Rights"): (i) to access and use the Application (including all Third Party Content, as defined below, except the IMA Rx module addressed below) on a designated number of Client servers set forth on Exhibit D (referred to herein collectively as, the "Application Server") or, (ii) if Client has opted for IMA's web-hosting services to access and use the Application via IMA's web-hosted Application, in either case with a maximum number of users set forth on Exhibit D, subject to Client's payment of the monthly Subscription Fees (defined below) and compliance with the terms and conditions of this Agreement, including without limitation the restrictions on use set forth in Section 1.2(d) below. These Access Rights are personal to Client and may only be used for Client's internal business purposes during the Term (defined below). Such grant permits Client to permit access to and use of the Application by its End Users (defined below) in accordance with the terms and conditions of this Agreement. The Access Rights shall terminate automatically upon expiration or termination of this Agreement in accordance with Section 4 hereof.

b. *IMA Rx.* If a subscription for the e-prescribing software module known as "IMA Rx" is included in the Application (as indicated in Exhibit D, as same may be amended from time to time), Client shall use IMA Rx in accordance with the terms and conditions set forth in the IMA Rx Subscription Addendum attached hereto as Exhibit C.

c. *Maximum Number of Simultaneous End Users; Administrative Users.* The maximum number of simultaneous users of the Application shall be as set forth on Exhibit D (each such user, an “**End User**”). No person may be an End User unless he or she is an employee, agent or contractor of Client, bound by a written contract with or written policy of Client that obligates such person to protect the intellectual property rights and Confidential Information (as defined below) of IMA under terms no less protective than those set forth in this Agreement. Client shall designate at least one End User to serve as an Administrative User, which person shall be the designated contact in the event IMA needs to communicate with Client regarding any technical issues arising in connection with the Application at any time during or following installation. The Administrative User(s) shall also work with IMA as necessary to install and implement any Updates.

d. *Restrictions on Use.* Client shall not permit, either directly or indirectly, any third party to use or access the Application, whether on a time sharing, remote job entry, service bureau arrangement or otherwise, without the express prior written consent of IMA. Client shall not, and shall not permit any person or third party to: (a) distribute, sell, lease, sublicense, publish, transfer, or otherwise make the Application, or any part thereof, available to a third party, either directly or indirectly, including by means of publishing or distributing all or any part of the Application or any information contained therein via the Internet, electronic bulletin board or other public computer-based information system; (b) reproduce or copy, translate, modify, adapt, decompile, disassemble or reverse engineer the object code version of or otherwise attempt to secure the source code of all or any part of the Application; (c) remove, disable, or otherwise create or implement any workaround to, any security features contained in the Application or (d) make any modifications to or create any derivative works from the Application or its content or any part thereof, including removal of any copyright or other proprietary rights notices. Notwithstanding the foregoing, Client shall be permitted to make copies of the Application solely for backup and archival purposes, which backup and/or archival copies must include all notices of proprietary rights, including trademark and copyright notices appearing in the Application. Client shall only print or download Application content, including specifically CPT<sup>®</sup> Editorial Content (together with any other CPT<sup>®</sup> products licensed to IMA from the American Medical Association and incorporated in the Application, “**CPT Content**”), for internal use, without modification of such content and with appropriate citation or attribution to the source of such content.

e. *Third Parties.* The Application incorporates certain content, intellectual property, or software that IMA licenses from third parties (“**Third Party Content**”), as identified in Exhibit A hereto. Client’s right to use and sublicense such Third Party Content is subject to the rights of, and limited by IMA’s agreements with, the Third Party Content licensors. Client’s right to receive updated versions of the Third Party Content is dependent upon the continuing contractual relationships between IMA and the Third Party Content licensors. Any third party licensor of such Third Party Content will be a direct and intended third party beneficiary of this Agreement. Client will promptly notify IMA of any unauthorized or improper use of the Application or any part thereof of which Client becomes aware, such as any unauthorized disclosure, display, or copying of the Application or its content. Client will use all commercially reasonable efforts to immediately terminate and prevent further occurrences of such improper use and if Client initiates any legal proceeding in connection therewith, IMA has the right (at its expense) to participate in or control any such proceeding. In such event, each party will provide the other with such authority, information and assistance related to such proceeding as may be reasonably necessary to safeguard IMA’s interests and Client’s rights under this Agreement.

### 1.3 Updates; Regulatory Changes.

a. *Updates.* If the Application is installed on one or more Client servers during the Term, IMA shall provide to Client all new releases of the Application (“**Updates**”) to be installed on the Application Server by either IMA or by Client using instructions provided to Client for such purpose. Updates may only be installed on the Application Server for which the Access Rights have been granted hereunder. If Client utilizes the web-hosted Application, IMA shall apply any Updates to the web-hosted Application following release. IMA shall, in its sole discretion, either install or provide instruction to Client for the installation of all such Updates. IMA shall provide documentation and/or training, as reasonably necessary, for each Update so provided and/or applied.

b. *Regulatory Changes.* If a change is required to paper claim forms or electronic claims formats to comply with a current, or upcoming, change to a federal or state law, rule or regulation, IMA, at no cost or expense to Client, will modify the Application to comply with the federal or state law, rule or regulation and provide the modification to Client promptly (or for changes required to meet upcoming changes to law, rule or regulation, within a reasonable time to allow Client to test the change before the requirement is effective), except that IMA will be allowed a reasonable period from the time IMA becomes aware of the changed requirement to develop and implement the modification in a subsequent release or Update. In addition, IMA, at no cost or expense to client, will make modifications to the Application to comply with other current, or upcoming, changes to federal or state laws, rules or regulations if the federal or state law, rule or regulation directly relates to the functionality of the Application and would result in the operation, or use by Client or the End Users, of the Application violating such federal law, rule or regulation.

### 1.4 Support Services.

a. *Support Services.* During the Term, IMA shall provide to fully trained End Users unlimited software support (“**Support Services**”) to address and remediate technical problems with the Application (e.g., bugs, error messages or other failures of the Application) (“**Errors**”). The Support Services shall be provided via email and telephone using support contact information provided from time to time by IMA; provided, however, that Client acknowledges that requests made via email will improve and enhance IMA’s ability to track and monitor the status of Support Services requests and accordingly, shall, whenever practicable, use (and cause its End Users to use) email as a primary means of making initial Support Services requests, which requests may indicate a need for follow-up by IMA via telephone. In order to provide support, IMA shall be given access to the designated servers, as necessary. Client acknowledges that this support is not intended for use as a training vehicle for new users and shall not permit anyone other than fully trained users to use this service. To the extent the Support Services are used as a training tool in IMA’s sole, but reasonable discretion, Client shall be charged at the time and materials rates.

b. *Service Availability.* All Support Services will be provided only during Support Hours (defined below). The average response time for service requests shall be four (4) Support Hours. For purposes of this Agreement, “**Support Hours**” shall mean the hours between 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays on which IMA’s offices are closed. IMA shall annually provide Client a calendar showing the days on which IMA is closed.

c. *Exclusions from Support Services.*

(1) Support Services do not include training or any other request for assistance other than those related to Errors. Training or services performed in response to such other

requests shall be billed at IMA's then-current time and materials rates listed on Exhibit D, as may be amended from time to time.

(2) Unless explicitly included in this Agreement or any exhibit or amendment hereto, Support Services do not include any support of (i) hardware related problems, or recovery of data and errors due to hardware problems, (ii) communication network related problems or (iii) operating system related issues or problems (if O/S Support Services are not indicated on Exhibit D). Such services shall, if applicable, be covered by separate written agreement between the Parties.

(3) Support Services do not include: (i) repair of damage or increase in service time caused by Client's failure to use the Application in accordance with the instructions of IMA, or permitting anyone other than IMA authorized maintenance personnel to perform maintenance work or to attempt repairs or adjustments on any Application component; (ii) repair of damage or increase in service time due to any cause external to the Application adversely affecting its operability or serviceability which shall include, but not be limited to, fire, flood, wind, lightening, failure or fluctuation of electrical power, air conditioning and humidity control equipment, telephone or other communication equipment, or due to any intentional or negligent act or misuse by Client; and (iii) services needed solely as a result of failures or malfunctions of Client's or a third party's network, hardware or operating systems. Upon Client's request, IMA, in its sole discretion, may provide these services billed at IMA's then-current time and materials rates listed on Exhibit D, as may be amended from time to time.

**1.5 Hosting Services.** If Client has elected (or elects in the future by amendment to this Agreement) to use IMA's web-hosting services for the Application ("**Hosting Services**") as indicated on Exhibit D, this Section 1.5 shall apply to such Hosting Services.

a. *Hosting.* IMA shall host the Application on servers owned, operated, housed, and maintained by IMA (or its subcontractors). IMA shall acquire and maintain, at no charge to Client, the hardware and software required to host the Application, and such hardware and software will be maintained in good operating order, consistent with or exceeding generally accepted industry practices and procedures. IMA will maintain sufficient hardware capacity to satisfy the technical requirements and the bandwidth and required storage capacity needed to perform its obligations hereunder.

b. *Application Availability.* The IMA-hosted Application shall be available for Client's use twenty-four hours a day, seven (7) days a week (less any downtime for planned maintenance). To the extent practicable, IMA shall notify Client in advance of any planned maintenance, upgrades or other work to be performed for the IMA-hosted Application or IMA server(s) that may cause the Application to be unavailable for any period of time during which the Application would normally be available. Client acknowledges, however, that there may be instances where it is not practical for IMA to give advance notice of emergency maintenance events. Client should report any unexpected disruption to the availability of the Application ("**Hosting Outage**") to IMA using the Support Services contact information provided by IMA from time to time. Client acknowledges that Hosting Outage reports made via email will improve and enhance IMA's ability to track and monitor the status of Hosting Outages and accordingly, shall, whenever practicable, use (and cause its End Users to use) email as a primary means of making initial reports of Hosting Outages, which reports may indicate a need for follow-up by IMA via telephone. IMA shall use commercially reasonable efforts to restore availability of the Application within a reasonable period of time after a Hosting Outage report has been received. All other issues with the IMA-hosted Application (i.e., Errors) should be reported and shall be addressed in accordance with the Support Services outlined in Section 1.4 above.

**1.6 O/S Support Services.** If Client has elected (or elects in the future by amendment to this Agreement) for Operating System Support ("**O/S Support Services**") as indicated on Exhibit D hereto, IMA

shall provide support for Client's operating system ("O/S") on the server which hosts the Application. Such services include diagnosing and solving O/S configuration problems and installing significant O/S patches necessary for server stability. O/S Support Services shall be performed during Support Hours only via email and telephone using contact information provided from time to time by IMA.

1.7 **Statements of Work.** At Client's request and upon mutual agreement with IMA, Client may engage IMA to perform other support, training, administrative or consulting services ("**Other Services**") for Client, which shall be set forth in separate written statements of work (each, an "**SOW**"), executed by an authorized representative of both Client and IMA. Unless otherwise expressly set forth therein, such SOWs and the performance of such Other Services shall be governed by this Agreement. Each SOW shall set forth the applicable fees for Other Services, which shall be invoiced monthly with the Subscription Fees, unless otherwise set forth in the SOW.

## Section 2: Client Responsibilities

2.1 **Technical Requirements.** During the Term, Client shall provide the following: (i) Application Server running a currently supported version of Redhat enterprise linux or such other operating system mutually agreed by the Parties, (ii) Application Server with outgoing access for application server to FTP and SMTP email, (iii) Workstations running a supported version Microsoft Windows, (iv) Secure VPN access to the Application Server for the IMA helpdesk, (v) Verified backup solution for all files on the Application Server and procedures for offsite storage of the backup tapes for disaster recovery and (vi) Installation of Updates within ninety (90) days of their release by IMA or, if such Update is to be installed by IMA, arrange for appropriate technical support by Client's staff (including the Administrative User) to allow for the installation within such time period. IMA shall notify Client of any changes in support status of required third party programs and software (i.e., Redhat enterprise linux and operating systems). These technical requirements shall not apply to a Client using IMA's web-hosted Application.

### 2.2 **End User Requirements.**

a. Client shall ensure that its End Users, or anyone else with authorized access to the Application, comply with the terms and conditions of use contained herein.

b. From time to time, IMA may, in its sole discretion, require End Users to review and sign agreements (or amendments thereto) respecting the terms and conditions of the use of the Application and its content (each, an "**End User Agreement**"). Any required End User Agreement shall be reasonable in form and content and not inconsistent with industry standards or this Agreement. Client shall (a) arrange for each End User to execute and return copies of such End User Agreements within a reasonable period of time designated by IMA and (b) not permit any individual to become or continue to be an End User unless such individual has executed such End User Agreements within the designated period of time.

c. Each End User shall have a named user account, which is unique and personal to him or her. Client hereby covenants that: (i) no employee, agent or other person shall be given access or be allowed to use the Application unless Client has obtained for each such person a named user account, (ii) no more than one employee, agent or other person shall be assigned to or permitted to use each named user account, (iii) End Users shall not share their user names, passwords, authentication codes or other user credentials of any kind with any person and (iv) Client shall authenticate and verify the identity of all End Users and maintain appropriate internal controls and procedures to ensure the privacy of named user accounts and associated passwords and authentication codes.

### Section 3: Fees and Payment

#### 3.1 Fees.

a. Intentionally Omitted.

b. *Subscription Fees.* In consideration of the Access Rights, the provision of Updates (and related services), the Support Services and, if applicable, use of the IMA Rx module (separately sublicensed pursuant to the terms of the IMA Rx Subscription Addendum), Hosting Services and O/S Support Services, Client shall pay IMA the monthly fees ("Monthly Fees") set forth on Exhibit D hereto, plus the annual fees for CPT Content ("CPT Fees"), other databases ("Database Fees") and certain other charges that apply annually for certain components of the Application as set forth on Exhibit D (together with the CPT Fees and Database Fees, the "Annual Fees" and Monthly Fees and Annual Fees, the "Subscription Fees") at the then-current rates set forth on Exhibit D.

c. *Additional Services Fees.* For any services provided to Client that are outside the scope of the Support Services, any optional services set forth on Exhibit D under Monthly Fees (i.e., Hosting Services and O/S Support Services) or any Other Services set forth in a fully executed SOW, Client shall pay IMA fees for such services ("Additional Services Fees" and, together with the Installation Fee and Subscription Fees, the "Fees") on a time and materials basis at the rates set forth on Exhibit D hereto.

~~8. *Amendments to the Rate Sheet (Exhibit D).* Prior to the beginning of each calendar year, IMA may, at its option, issue a proposed amendment to Exhibit D (Rate Sheet) modifying the Subscription Fees and/or the time and materials basis rates. Client shall have fifteen (15) days from receipt thereof to provide written notice to IMA that the proposed amendment to Exhibit D is rejected and the Agreement terminated effective December 31<sup>st</sup> of such year. If Client fails to reject the proposed amendment to Exhibit D, such amendment shall automatically become effective on the later of (i) the first day of the new calendar year and (ii) the sixteenth (16<sup>th</sup>) day following Client's receipt thereof. At any other time during the Term upon the Parties' mutual written agreement, Exhibit D may be amended to add additional End Users or optional Application modules. **CONTRACT MAY NOT BE AUTOMATICALLY RENEWED**~~

3.2 *Expenses.* Client shall reimburse IMA for travel and other out of pocket expenses ("Expenses") incurred by IMA directly related to the installation, training and services provided to Client under this Agreement or any exhibit or amendment hereof.

#### 3.3 Terms of Payment.

a. Intentionally Omitted.

b. During the Term, Client shall (whether or not it has received an invoice) pay the Monthly Fees on the first day of each month during the Term.

c. IMA shall issue an annual invoice for (a) the Annual Fees (other than CPT Fees) based on the maximum number of simultaneous users for each component as set forth on Exhibit D and (b) the CPT Fees based on the estimated total number of Client named user accounts ("Estimated Named Users") that will access or otherwise use the Application during the calendar year (as provided by Client). Periodically throughout the year, IMA will review the total number of Client named user accounts that have actually accessed or otherwise used the Application as of the review date ("Actual Named Users"). If at any time the number of Actual Named Users exceeds the Estimated Named Users, IMA shall issue an invoice for CPT Fees for the additional named user accounts that have accessed or otherwise used the Application during

the applicable calendar year (to the extent not yet invoiced based on a prior review in the same calendar year). If, at the end of the calendar year, the number of Estimated Named Users is more than the number of Actual Named Users, IMA shall (i) credit Client with the difference in CPT Fees actually paid and the CPT Fees actually incurred based on the number of Actual Named Users to be applied to the following calendar year's CPT Fees or (ii) only if this Agreement is not continuing into a new calendar year, IMA shall refund Client the difference. For the avoidance of doubt, additional Annual Fees other than the CPT Fees shall only apply if the maximum number of simultaneous users of the applicable component is increased, and such fees shall be invoiced at the time such maximum is increased. Notwithstanding anything to the contrary, it is agreed and understood that the CPT Fees shall apply at the per Named User per Year rate set forth on Exhibit D per Actual Named User accessing or using the Application during the calendar year without regard to, or any proration for, the amount of time (no matter how short) during such calendar year a named user account was active. Client shall pay invoices for Annual Fees in full within thirty (30) days of receipt thereof.

d. IMA shall issue an invoice for Additional Services Fees and Expenses periodically (that is, on a monthly, quarterly or other mutually agreed upon period), as applicable, setting forth in reasonable detail (i) for Additional Services Fees, the nature of the work performed, date(s) of performance and number of hours spent on such services and (ii) for Expenses, the nature of such expenses. Client shall pay such invoices in full within thirty (30) days of receipt thereof.

e. All payments of Fees shall be made via company check, bank check or other certified funds, or electronic transfer of funds payable to IMA Systems LLC delivered to IMA at the address listed for IMA in Section 10.5 hereof or such other address as IMA may designate from time to time.

#### Section 4: Term and Termination

4.1 *Term.* The term of this Agreement shall be from the Effective Date through December 31<sup>st</sup> of the following calendar year (the "Initial Term"). ~~After the Initial Term, this Agreement shall automatically renew for one year periods (each a "Renewal Term" and, together with the "Initial Term," the "Term") unless Client or IMA provides no less than thirty (30) days' notice of such Party's decision not to renew this Agreement.~~

4.2 *Termination.* This Agreement shall terminate upon the earlier of (i) the expiration of the Term, ~~(ii) Client's rejection and termination of this Agreement after receipt of a proposed amendment to Exhibit D in accordance with Section 3.1(d) of this Agreement~~ or (iii) termination for cause by either Party in accordance with Section 4.2(a) below.

a. *Termination for Cause.* Either Party may terminate this Agreement immediately upon the occurrence of any of the following events: (1) the other Party materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof or (2) the other party (i) ceases to do business in the normal course, (ii) becomes or is declared insolvent or bankrupt, (iii) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) that is not dismissed within ninety (90) days of its initiation or (iv) makes an assignment for the benefit of creditors.

b. *Effect of Termination; Post-Termination Obligations.* Client shall pay all Fees and Expenses incurred by IMA through the date of termination, including the Subscription Fees for any partial month prorated through the date of termination. Effective upon the termination date, Client shall make no further use or access of the Application. To the extent the Application or any part thereof is installed on Client's Application Server(s), then within ten (10) business days following the date of termination, subject

to applicable law, Client will permit IMA access to the Application Server at a mutually agreed upon time to remove or otherwise disable applicable license keys for the Application.

## Section 5: Confidentiality

5.1 **“Confidential Information”** means all information or materials of each Party (**“Disclosing Party”**), whether commercial, financial, technical or otherwise, disclosed directly or indirectly to the other Party (**“Recipient”**) (whether disclosed orally, in documentary form, by demonstration or otherwise) which is contained in any form or media whatsoever (including, without limitation, data, drawings, films, documents and computer readable media), which for IMA includes, but is not limited to, the Application and Third Party Content. Confidential Information does not include information that (a) is already known to the Recipient at the time such information is received by Recipient, (b) is or becomes publicly known though no act of Recipient, (c) is received by Recipient from a third party who is under no obligation of confidentiality or non-use owed to Disclosing Party with respect to such information or (d) is independently developed by Recipient without use, recourse, or reference to information disclosed by Disclosing Party.

5.2 *Confidentiality Obligations.* Except with the written consent of Disclosing Party, Recipient shall not disclose, in whole or in part, the Disclosing Party’s Confidential Information, or other information that has been designated as confidential, to any individual, entity or other person, except to those persons who require access for performance of this Agreement or exercise of rights granted hereunder. Recipient shall safeguard and treat Disclosing Party’s Confidential Information in a confidential manner and use best efforts to maintain the confidentiality thereof. To the extent Client Confidential Information includes patient information and data subject to federal and state privacy laws, including but not limited to, the Health Insurance Portability and Accountability Act of 1996 (collectively, the **“Privacy Laws”**), IMA shall comply with applicable Privacy Laws in maintaining the confidence of such regulated Client Confidential Information. For the avoidance of doubt, nothing herein is intended to or does prohibit IMA from disclosing Client’s name to any Third Party Content licensor, and IMA is expressly hereby permitted to disclose Client’s name to any Third Party Content licensor as required by the Third Party Content licensor.

5.3 *Legal Process.* Should Recipient become legally compelled to disclose any portion of Confidential Information in connection with a lawsuit or similar proceeding, Recipient shall give Disclosing Party prompt notice of that fact, including in its notice the legal basis for the required disclosure and the nature of the Confidential Information that must be disclosed. Recipient shall cooperate fully with Disclosing Party in obtaining a protective order or other appropriate protection relating to the disclosure and subsequent use of such Confidential Information. Recipient shall disclose only that portion of the Disclosing Party’s Confidential Information that is legally required to be disclosed.

5.4 *Enforcement of Confidentiality Obligations.* The Recipient agrees that it may be impossible to measure the damages that would result to the Disclosing Party from violations by the Recipient of the provisions of this Section 5. In addition to any other remedies which the Disclosing Party may have at law or in equity, the Recipient hereby agrees that the Disclosing Party, at its sole cost and expense, shall have the right to seek to obtain preliminary and permanent injunctive relief to prevent a breach or contemplated breach, of Recipient’s confidentiality obligations hereunder.

## Section 6: Intellectual Property

6.1 *Ownership.* Except as otherwise set forth in this Agreement, IMA shall own all right, title and interest in the Application and in any intellectual property rights therein or in any derivative works, improvements or modifications thereof (including, for the avoidance of doubt, any software deliverables customized by IMA for Client’s use as part of, or in conjunction with, the Application). Client shall have



no rights in the Application (including Third Party Content) except those expressly granted hereunder. Client shall own all right, title and interest to all data inputted or uploaded to the Application by or on behalf of Client, including such data stored on the IMA server(s) in connection with Hosting Services for the Client, and such data shall be treated as Client's Confidential Information (defined above) for purposes of this Agreement.

**6.2 Third Party Infringement Claims.** If Client is prohibited from using the Application or any portion thereof provided under this Agreement as a result of any claim of a third party that the product infringes upon such third party's proprietary rights, within sixty (60) days of any such prohibition, IMA will, without additional charge to Client: (a) replace the Application or infringing portion thereof with a compatible functionally equivalent and non-infringing product, (b) modify the Application or alleged infringing portion thereof to make it non-infringing, (c) obtain a license for Client to continue to use the Application or infringing portion thereof, and pay any additional fee required for such license or (d) return the license fee for the infringing product to Client. IMA shall have no obligation under this Section 6.2 if the third party infringement claim result from (a) a correction or modification of the Application not provided, implemented or installed by IMA, (b) the failure of Client to promptly use an Update if use of such Update would have avoided the infringement, (c) the combination of the Application with other non-IMA software, or (d) any breach of contract or any negligent, willful or fraudulent act of omission by Client, its employees or agents.

#### **Section 7: IMA Warranties; Disclaimers.**

**7.1 Warranties.** IMA warrants to Client that during the Term, the Application will perform in accordance with the specifications published by IMA in the form of user manuals, system documentation, promotional literature and correspondence between IMA and Client, in each case as may be updated by IMA from time to time. In the event of a failure of the Application reported to IMA during the Term and as the sole and exclusive remedy for a breach of the warranty in this Section 7.1, IMA will use commercially reasonable efforts to repair or replace the Application; provided that the obligation to repair malfunctions of the Application shall be limited to malfunctions occurring during the course of normal usage of the Application. EXCEPT AS PROVIDED ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION AND ALL RELATED INFORMATION, TECHNOLOGY AND SERVICES PROVIDED BY OR ON BEHALF OF IMA ARE PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND IMA EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ACCURACY.

**7.2 Professional Advice Disclaimer.** THE APPLICATION DOES NOT CONSTITUTE THE PRACTICE OF ANY MEDICAL, NURSING OR OTHER PROFESSIONAL HEALTH CARE ADVICE, DIAGNOSIS OR TREATMENT. IMA DOES NOT RECOMMEND OR ENDORSE ANY SPECIFIC TESTS, PRODUCTS, PROCEDURES, OPINIONS, OR OTHER INFORMATION THAT MAY BE MENTIONED IN ITS APPLICATION. The content of the Application, such as text, graphics, images, logos, icons, data, graphs, audio, videos, computer programs and other material and information, and including specifically Third Party Content (collectively the "Content"), is designed to provide accurate and authoritative information regarding the applicable subject matter. The Content is provided with the understanding that the publisher is not engaged in rendering professional services. The Content is not intended to be a substitute for, or to be relied upon as, legal, accounting, medical, psychological or other expert advice.

**7.3 Third Party Content Disclaimer.** CLIENT ACKNOWLEDGES THAT THE SOFTWARE CONTAINS THIRD PARTY CONTENT THAT IMA DOES NOT CREATE, INCLUDING THE CPT

CONTENT. SUCH THIRD PARTY CONTENT IS PROVIDED "AS IS" AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR QUALITY, ACCURACY, COMPLETENESS, SUITABILITY AND/OR THAT IT WILL MEET CLIENT'S REQUIREMENTS, ARE HEREBY DISCLAIMED BY IMA FOR ITSELF AND ON BEHALF OF THIRD PARTY CONTENT LICENSORS, INCLUDING THE AMERICAN MEDICAL ASSOCIATION. TO THE FULLEST EXTENT PERMITTED BY LAW, IMA DOES NOT ACCEPT ANY RESPONSIBILITY OR LIABILITY FOR ANY CONTENT PROVIDED BY THIRD PARTIES INCLUDED IN THE SOFTWARE INCLUDING WITH RESPECT TO ANY BUG, ERROR, OMISSION, DEFECT, DEFICIENCY, INACCURACY OR NONCONFORMITY IN ANY THIRD PARTY CONTENT IN THE APPLICATION. THIRD PARTY CONTENT LICENSORS ARE UNDER NO OBLIGATION TO CLIENT HEREUNDER, INCLUDING WITHOUT LIMITATION, RESPECTING THIRD PARTY CONTENT, THE PROVISION OF UPDATES, REPLACEMENT COPIES OR ANY SERVICES, PRODUCTS OR INFORMATION OF ANY KIND.

7.4 *U.S. Government Rights.* The Application includes CPT® Editorial Content, which is commercial technical data, which was developed exclusively at private expense by the American Medical Association, AMA Plaza, 330 North Wabash, Suite 39300, Chicago, Illinois 60611-5885. The AMA does not agree to license CPT to the Federal Government based on the license in FAR 52.227-14 (Data Rights - General) and DFARS 252.227-7015 (Technical Data - Commercial Items) or any other license provision. The AMA reserves all rights to approve any license with any Federal agency.

#### **Section 8: Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY LAW, IMA SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OF PROFIT, BUSINESS, REVENUE, USE, DATA, OPPORTUNITY OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES WHATSOEVER IN CONNECTION WITH, ARISING OUT OF, OR RELATED TO THIS AGREEMENT OR THE CLIENT'S POSSESSION OR USE OF THE APPLICATION, REGARDLESS OF THE THEORY OF LIABILITY, WHETHER UNDER CONTRACT, WARRANTY, STRICT LIABILITY, OR IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SUCH DAMAGE MAY HAVE BEEN FORESEEABLE OR IMA MAY HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

TO THE FULLEST EXTENT PERMITTED BY LAW, NO THIRD PARTY CONTENT LICENSOR, INCLUDING WITHOUT LIMITATION THE AMERICAN MEDICAL ASSOCIATION, SHALL BE LIABLE TO CLIENT FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, FOR CONSEQUENTIAL OR SPECIAL DAMAGES, OR LOST PROFITS FOR SEQUENCE, ACCURACY, OR COMPLETENESS OF DATA, OR THE FAILURE OF ANY THIRD PARTY CONTENT TO MEET CLIENT'S REQUIREMENTS, OR FOR ANY CONSEQUENCES DUE TO USE, MISUSE, OR INTERPRETATION OF INFORMATION CONTAINED OR NOT CONTAINED IN THE APPLICATION OR ANY THIRD PARTY CONTENT.

#### **Section 9: Dispute Resolution**

Any dispute under this Agreement shall be submitted to a single arbitrator in New York County, New York under the Commercial Arbitration Rules of the American Arbitration Association then in effect, and the decision of the arbitrator shall be final and binding on the Parties. The Parties specifically agree to entry of judgment and injunction as may be provided by the arbitrators, to be enforced in any court of competent jurisdiction if the arbitration award is not satisfied within sixty (60) days of the judgment. For purposes of such enforcement, the Parties submit to the jurisdiction of the courts of the State of New York situated in

New York County, and each party hereto hereby agrees to personal jurisdiction in such courts and waives all defenses of improper or incorrect forum. The cost of arbitration shall be shared equally by the Parties.

### Section 10: Miscellaneous

10.1 *Assignment.* Neither Party may assign this Agreement, or their respective rights and obligations hereunder, without the prior written consent of the other Party, except that IMA may assign this Agreement without Client's permission in the context of a merger, reorganization, or sale or other disposition of all or substantially all of the assets relating to this Agreement. Any attempted assignment that is contrary to the terms of this Section 9.1 is *void ab initio* and shall have no impact whatsoever.

10.2 *Waiver.* Any waiver of any term, covenant or condition of this Agreement by any Party shall not be effective unless set forth in writing and signed by the Party granting such waiver, and in no event shall any such waiver be deemed to be a waiver of any other term, covenant or condition of this Agreement or any subsequent waiver of the same term, covenant or condition.

10.3 *Entire Agreement; Amendment.* This Agreement, including all Exhibits hereto, contains the entire agreement between the Parties. All prior negotiations and all agreements, either oral or written, between the Parties are merged into this Agreement and there are no understandings or agreements other than those incorporated herein. This Agreement supersedes any and all other previous agreements. Any amendment to or modification of this Agreement or any statement of work shall be effective only if it is in writing and signed by the Parties, except for an amendment to Exhibit D proposed by IMA and not rejected by Client in accordance with the procedures set forth in Section 3.1(d).

10.4 *Severability.* A determination that any provision in this Agreement is invalid, illegal, or unenforceable shall not affect the enforceability of any other provision. Any such provision deemed invalid, illegal or unenforceable shall be amended only to the extent necessary to cause such provision to become valid, legal and enforceable.

10.5 *Notices.* All notices and requests in connection with this Agreement shall be deemed given (a) when personally delivered; (b) when delivered by facsimile or email; (c) when delivered by a nationally recognized courier service guaranteeing next-day delivery; or (d) 5 business days after being placed in the mails of the United States, postage prepaid, certified or registered, return receipt requested, to the respective party at their address set forth below or, as applicable, in the statement of work to which a particular notice or request relates. All notices shall be addressed as follows (or such other address as either party may in the future specify in writing to the other):

To Client: ALBANY COUNTY DEPT. OF MENTAL HEALTH  
175 Green St. Albany NY 12202  
Attention: MATTHEW REUTER  
Email: MATTHEW.REUTER@albanycountyny.gov

To IMA: 32 Broadway, Suite 614  
New York, New York 10004  
Attention: Barry Samel  
Email: zevi@imasys.com

10.6 *Governing Law.* This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New York.

10.7 *Exhibits*. Capitalized terms not otherwise defined in the Exhibits shall have the meaning ascribed to them in this Agreement.

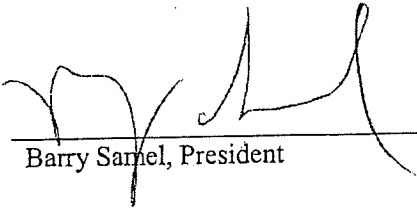
10.8 *Headings; Pronouns*. The section headings used in this Agreement are intended for convenience only and shall not be deemed to affect in any manner the meaning or intent of this Agreement or any provision hereof. Any personal pronouns used herein shall be construed as gender neutral.

10.9 *Counterparts; Electronic Signature*. This Agreement may be executed in counterparts, and delivered by facsimile or other electronic means, each of which shall be deemed an original and all of which when taken together, constitute one and the same instrument, binding on the parties hereto. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

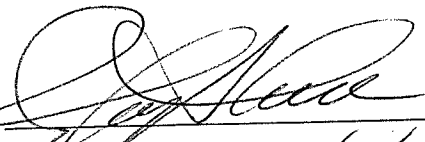
[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**IMA SYSTEMS LLC**

By:   
Barry Samel, President

**ALBANY COUNTY DEPARTMENT OF MENTAL HEALTH**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ 2/20/16

**List of Addenda**

- Exhibit A – Description of the Application
- Exhibit B – N/A
- Exhibit C – IMA Rx Subscription Addendum
- Exhibit D – Rate Sheet

## Exhibit A

### Description of the Application

The Application consists of the following:

I. Standard

1. Meaningful Use Certified EHR.
2. Practice Management Software, which includes modules for scheduling and full revenue cycle management.
3. System Administration function to maintain users, security and application lists and tables.

II. Custom

1. None.

III. Third Party Content. "Optional" Third Party Content will be included in the Application as indicated in Exhibit D, as the same may be amended from time to time.

1. CPT® Content. Copyright to CPT® and CPT® Editorial Content are owned by the American Medical Association ("AMA"). CPT is a registered trademark of the AMA.
2. Wiley Treatment Planners [optional]. Copyright to all Treatment Planner Datasets owned by John Wiley and Sons.
3. 3M Grouper Plus System-Enhanced APGs with NY Reimbursement [optional].
4. IMA Rx [optional]. Subject to terms and conditions of the IMA Rx Subscription Addendum.

**Exhibit B**

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Exhibit C

IMA Rx Subscription Addendum

THIS IMA RX SUBSCRIPTION ADDENDUM (this “**IMA Rx Addendum**”) is made as of January 1st, 2018 (the “**Effective Date**”) and made part of the Subscription and Support Agreement (the “**Agreement**”) between IMA Systems LLC (“**IMA**”) and Albany County Department of Mental Health (“**Subscriber**”).

WHEREAS, the Application (as defined in the Agreement) includes a module for e-prescribing known as “**IMA Rx**” (the “**System**”), which allows end users to (1) view patient eligibility, (2) track patient medication history, (3) receive notifications o potentially negative drug/drug or drug/food interactions or allergic reactions to medications, (4) view patient-specific formulary information and (5) transmit prescriptions electronically to a patient’s preferred pharmacy for subsequent pick-up by a patient; and

WHEREAS, IMA licenses the System for inclusion in the Application from H2H Solutions, Inc., a third party vendor (the “**System Supplier**”), and must therefore separately sublicense the System in compliance with terms and conditions specific to the System;

NOW THEREFORE, in consideration of the promises and covenants contained in this IMA Rx Addendum and such other good and valuable consideration acknowledged hereby, the Parties agree as follows:

**Section 1: Definitions.**

1.1 “**IMA Rx Addendum**” has the meaning ascribed to it in the preamble of this IMA Rx Subscription Agreement Addendum.

1.2 “**Confidential Information**” means non-public information provided by or on behalf of a Party to the other Party pertaining to: (1) Subscriber Content (defined below); (2) the technology used to implement, operate, and configure the System and information relating to the System obtained by Subscriber pursuant to this IMA Rx Addendum; (3) the pricing and other provisions of this IMA Rx Addendum; (4) Third Party Content (defined below); and (5) all information designated by IMA or by Subscriber as “confidential,” “proprietary,” or the like. Confidential Information shall not include any information to the extent that such information:

- a. is already known to the receiving Party (defined below) at the time the receiving Party receives such information from the disclosing Party;
- b. is or becomes publicly known through no wrongful act of the receiving Party;
- c. is rightfully received from a third party without restrictions on such third party or on the receiving Party;
- d. is independently developed by the receiving Party without use, recourse, or reference to information disclosed by the disclosing Party; such independent development to be conducted by persons who have not had access to such information; or
- e. is furnished to a third party by the disclosing Party without a confidentiality restriction on the third party’s rights.



1.3 “**Confidentiality Obligations**” means the obligations set forth in Section 4 of this IMA Rx Addendum.

1.4 “**DEA Regulations**” means the Drug Enforcement Agency’s Electronic Prescriptions of Controlled Substances Regulations Act and rules and regulations promulgated thereunder.

1.5 “**Effective Date**” has the meaning ascribed to it in the preamble of this IMA Rx Addendum.

1.6 “**End User**” means each physician, employee, agent or consultant of Subscriber, or other person having an employment, contractual, or other form of legally binding relationship with Subscriber, who is granted written permission by Subscriber to access the System on behalf of the Subscriber during the Term (as defined in this IMA Rx Addendum) of this IMA Rx Addendum. All End-Users must be subject to and bound by the Confidentiality Obligations. No individual may be an authorized End User if such person is not bound by the Confidentiality Obligations.

1.7 “**EPCS Prescribers**” means an End-User who is authorized to use IMA Rx for Electronic Prescriptions of Controlled Substances.

1.8 “**IMA**” has the meaning ascribed to it in the preamble of this IMA Rx Addendum.

1.9 “**Internal Use**” means non-commercial use of the System and any use by an End-User that is solely for Subscriber’s internal business purposes, such as managing prescriptions for Subscriber’s patients. Internal Use does not include the providing of access to the System or the use of the System or of any System Content as a service (with or without a fee) to any third party.

1.10 “**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as the same has been or may be amended from time to time.

1.11 “**MEDI-SPAN Content**” means the databases of pharmaceutical information included in the System.

1.12 “**Party**” means either IMA or Subscriber, depending on the context. “**Parties**” means both IMA and Subscriber collectively.

1.13 “**Prescribers**” means an End User who is authorized to write and send prescriptions using the System.

1.14 “**RxHub Content**” means the system for facilitating electronic pharmaceutical prescribing and accessing benefit information included in the System.

1.15 “**Services**” means hosting of the System, ongoing maintenance of Surescripts certification requirements and support services as described in Section 1.4 of the Agreement.

1.16 “**Subscriber**” has the meaning ascribed to it in the preamble of this IMA Rx Addendum.

1.17 “**Subscriber Content**” means information inputted or uploaded into the System by Subscriber or on behalf of Subscriber. Subscriber Content includes patient-specific information inputted into the System that is subject to privacy regulations under HIPAA.

1.18 “**Subscription Fees**” means consideration due IMA by Subscriber in exchange for the Services (described below), as listed in Exhibit D to the Agreement.

1.19 “**SureScripts Content**” means the “SureScripts Messenger Service” for “Electronic Prescription Messages” included in the System.

1.20 “**System**” has the meaning ascribed to it in the preamble of this IMA Rx Addendum.

1.21 “**System Content**” means collectively the software, technology, architecture, “look and feel,” operation configurations, technical specification, and all other attributes associated with the System, the processes performed by or at the System, and all other System content other than Subscriber Content.

1.22 “**System Supplier**” has the meaning ascribed to it in the IMA Rx Addendum.

1.23 “**Term**” has the meaning ascribed to it in the Agreement.

1.24 “**Third-Party Content**” means collectively (a) information displayed by the System that is not supplied by IMA, System Supplier or Subscriber and (b) functionality utilized by the System that is not owned by IMA or System Supplier. Third Party Content includes but is not necessarily limited to SureScripts Content, RxHub Content, and MEDI-SPAN Content. Third Party Content that is accessible through use of the System is subject to change and is contingent upon a binding and then current contractual relationship between System Supplier and the Third Party Content Provider.

1.25 “**Third Party Content Restrictions**” means contractual limitations pertaining to Third Party Content required by the Third Party Content Provider. The ability of Subscriber to make continued use of Third Party Content is contingent upon compliance with the applicable Third Party Content Restrictions.

1.26 “**Third Party Content Provider**” means a third party who provides Third Party Content.

## **Section 2: Access Rights**

### **2.1 Access Rights and Services.**

a. IMA hereby grants Subscriber a limited, non-transferable, and non-exclusive right and sublicense to access and use the System solely for Internal Use from locations in the United States, subject to Subscriber’s payment of the applicable Subscription Fees and the compliance by Subscriber with the provisions of this IMA Rx Addendum (including all applicable Third Party Content Restrictions). Such grant permits Subscriber to permit access to and use of the System by its End Users in accordance with the terms and conditions of this IMA Rx Addendum. All access rights terminate upon termination of this IMA Rx Addendum. Notwithstanding anything to the contrary herein, it is expressly understood that this IMA Rx Addendum does not include use of the Application for EPCS Prescribers. Additional terms, conditions and fees shall apply to use of the Application by EPCS Prescribers.

b. IMA (through System Supplier) shall provide the Services, as well as the Onboarding Services described in Section 2.1(c) below. Subscriber shall access the System through the Application. The provision of the Services and Onboarding Services and ability of Subscriber to access the System is contingent upon the timely payment of all Fees and upon the compliance of the Subscriber and all End Users with the terms and conditions of this IMA Rx Addendum.

c. IMA (through System Supplier) shall perform the following onboarding services for each EPCS Prescriber (“**Onboarding Services**”) as required by the Drug Enforcement Agency’s Electronic Prescriptions of Controlled Substances Regulations Act and rules and regulations promulgated thereunder (“**DEA Regulations**”):

(1) Registration Authority (RA) services, including but not limited to remote identity proofing of End-User Prescribers at Assurance Level 3 requirements as specified in NIST SP 800-63-2; and

(2) Credential Service Provider (CSP) services, including but not limited to the issuance of credentials (i.e., authentication tokens) at Assurance Level 3 as specified in NIST SP 800-63-2.

Notwithstanding the foregoing, Onboarding Services shall not include in-person identity proofing in the event an EPCS Prescriber fails the remote identity proofing test. Should in-person identity proofing be required, additional fees and costs shall apply.

2.2 Retention of Rights. Subscriber and IMA expressly acknowledge and agree:

a. All ownership rights to the System and to all System Content remain exclusively with IMA, System Supplier or Third Party Content Providers, as applicable. Subscriber shall not have any rights to the System or System Content except as expressly provided for herein. All ownership rights to Subscriber Content remain exclusively with Subscriber. None of IMA, System Supplier or Third Party Content Providers shall have any rights to any Subscriber Content except as expressly provided for herein.

b. Subscriber shall not reproduce, sublicense, sell, distribute, transmit, or otherwise make accessible the System or any System Content to or for a third party or to otherwise make use of the System or System Content for any purpose outside of Internal Use to manage prescriptions for patients.

c. Only End Users under the control and acting on behalf of Subscriber are authorized to access the System hereunder.

d. Subscriber agrees not to violate any Third Party Content Restrictions.

2.3 Reverse Engineering and other Prohibited Activities. Subscriber’s use rights under this IMA Rx Addendum are expressly conditioned upon Subscriber’s and each End-User’s (i) not permitting any person or entity to access or to use the System or any System Content except as expressly permitted by this IMA Rx Addendum, (ii) not using any System Content in the operation of a service bureau, to provide time sharing services, or in any other similar arrangement, (iii) not decompiling, disassembling, or otherwise reverse engineering any System Content, (iv) not permitting any unauthorized activities directed to the System or to any System Content (such as uploading of any disabling or injurious code) and (v) not permitting any activities under its control that violate Third Party Content Restrictions.

2.4 Changes to the System. IMA or System Supplier may make changes to the appearance, process-flow, and functionality of the System so long as the functionality of the System available on the Effective Date is not eliminated or materially reduced. Subscriber acknowledges that changes to Third Party Content are outside the control of IMA and that Subscriber’s sole and exclusive remedy in such an instance is termination of the IMA Rx Addendum pursuant to Section 5.3 below.

### Section 3: Subscription Fees and Additional Obligations

3.1 Subscription Fees. Subscriber shall pay the Subscription Fees listed on Exhibit D to the Agreement under “ePrescribing (IMA Rx) Subscription” for use of the System and the Services and the one-time fees for the Onboarding Services in accordance with Exhibit D. In accordance with the payment terms of the Agreement, Subscriber shall pay such Subscription Fees on the first day of each month following the Effective Date. One-time fees for Onboarding Services shall be invoiced according to the terms of Exhibit D and payable in accordance with the payment terms of the Agreement. Time is of the essence with respect to Subscriber’s duty to make all payments when due. All pricing terms are confidential, and Subscriber shall not disclose them to any third party.

3.2 Additional Obligations. The ability of Subscriber to access the System and to benefit from the Services is contingent upon Subscriber’s compliance with the following obligations in this Section 3.2.

a. Subscriber and its End Users shall use IMA Rx in compliance with all applicable laws and regulations. Such laws and regulations include but are not limited to laws and regulations pertaining to the use and disclosure of individually identifiable health information (i.e., HIPAA) and DEA Regulations.

b. All patient consents and authorizations by Subscriber and its End Users will allow for the disclosure of all data elements transmitted to the System (including but not limited to Third Party Content) regardless of whether or not Subscriber intends to utilize all such data elements.

c. Third Party Content shall only be used by the Subscriber and its End Users in a manner that is expressly permitted by the functionality of the System.

d. Subscriber and its End Users shall not create or permit the creation of derivative works of the System or of any Third Party Content.

e. Subscriber and its End Users shall access RxHub Content in connection with and in conjunction with the treatment of a specific patient in a schedule or walk-in outpatient visit or another specific treatment event. Subscriber shall not access or attempt to access RxHub Content for an inpatient or other acute service or for any institutional service.

f. Subscriber shall allow IMA, System Supplier or Third Party Content Providers to access, inspect, and audit the records of Subscriber stored or otherwise accessible on or through the System that relate to Subscriber’s use of the Services and Subscriber’s access to the System.

g. Subscriber and its End Users shall not allow third parties to access the System or the Third Party Content.

h. Subscriber shall not permit any End User to share his/her user credentials (UID, passwords, and credentials for 2-step authentications) with any other person (including another End User with his/her own user credentials).

### Section 4: Confidentiality

4.1 Treatment of Confidential Information. Each Party agrees (i) not to disclose to any third party the Confidential Information of the other Party, and (ii) not to use the Confidential Information of the other Party for any purpose other than to perform the duties imposed by this Agreement or to exercise the

rights conferred by this Agreement. IMA may share Confidential Information relating to Subscriber's use of the System with System Supplier and Third Party Content Providers and other suppliers to the extent such sharing occurs for the purpose of making the System commercially available to Subscribers.

4.2 Aggregated Data. IMA, System Supplier and Third Party Content Providers may utilize, transfer and disclose aggregated information, including but not limited to, summary statistics, which information has been de-identified in accordance with 45 C.F.R. 164.514 such that it does not identify an individual and cannot be used to identify an individual for any purpose.

## **Section 5: Termination**

5.1 Termination of IMA Rx Addendum. This IMA Rx Addendum shall terminate upon the earlier of: (i) termination of the Agreement, (ii) termination for cause in accordance with Section 5.2 below, or (iii) termination due to unavailability in accordance with Section 5.3 below.

5.2 Termination for Cause. Either Party may terminate this IMA Rx Addendum due to breach of this IMA Rx Addendum or material breach of the Agreement by the other Party upon (a) providing written notice of breach to the breaching Party; and (b) the expiration of a cure period after which the breach remains uncured. The cure period for the late payment of a Fee or for the misuse or disclosure of Confidential Information is ten (10) days. The cure period for all other breaches is thirty (30) days.

5.3 Termination due to Unavailability. If due to no fault of Subscriber, there is a material reduction in the functionality of the System, including but not limited to a material reduction or unavailability of one or more Third Party Content components, Subscriber may terminate this IMA Rx Addendum upon thirty (30) days prior written notice to IMA.

5.4 Effect of Termination of IMA Rx Addendum. Client shall pay all Fees incurred through the date of termination, included prorated Fees for any partial month. A termination of this IMA Rx Addendum pursuant to Section 5.3 hereof shall not act as or be grounds for termination of the Agreement.

5.5 Termination of End-User. If the employment, association or other contractual relationship between Subscriber and an End-User, who is registered to use the System and authorized to write and send prescriptions, ends, Subscriber shall notify IMA immediately in accordance with Section 9.5 of the Agreement to terminate the access of such End-User. Subscriber shall not be liable to IMA for any fees for that End-User beyond one (1) calendar month after receipt of such notification by IMA.

## **Section 6: Disclaimers, Limits of Liability and Indemnification**

6.1 Warranty. IMA warrants that the Services shall be provided in a workmanlike and professional manner.

6.2 Remedies. Should IMA be made aware of any breach of any warranty given under Section 6.1 above, IMA shall use customary professional means to correct the condition that has caused the breach, and such correction shall be the exclusive remedy for such breach.

6.3 Disclaimers.

a. Warranty Disclaimers. THE SYSTEM AND ALL THIRD PARTY CONTENT IS PROVIDED ON AN "AS-IS" BASIS. THE WARRANTIES SET FORTH IN THIS IMA RX ADDENDUM ARE THE ONLY WARRANTIES GIVEN BY IMA RESPECTING IMA RX. NO OTHER

WARRANTY (INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, AND NON-INFRINGEMENT), EXPRESS OR IMPLIED, IS APPLICABLE TO THIS IMA RX ADDENDUM. NO WARRANTY IS GIVEN HEREUNDER TO SUBSCRIBER BY SYSTEM SUPPLIER OR ANY THIRD PARTY CONTENT PROVIDER.

b. Content Disclaimer. The System uses available technology to match patient identities with their prescription drug benefit and prescription drug records in order to provide physicians with patient prescription drug benefit and medication history information. Because patient information is maintained in multiple places, not all of which are accessible to IMA, System Supplier, applicable Third Party Content Providers or the System, and because not all patient information is kept in a standard fashion or is regularly updated, it is possible that false matches may occur or that there may be errors or omissions in the prescription drug benefit or medication history information. ANY TREATING PHYSICIAN OR OTHER HEALTH CARE PROVIDER SHOULD VERIFY PRESCRIPTION DRUG BENEFIT OR MEDICATION HISTORY INFORMATION WITH EACH PATIENT AND/OR THE PATIENT'S REPRESENTATIVES BEFORE SUCH INFORMATION IS RELIED UPON OR UTILIZED IN DIAGNOSING OR TREATING THE PATIENT. IMA IS NOT A HEALTH PLAN, HEALTH CARE PROVIDER OR PRESCRIBER. THE SYSTEM AND SERVICES PROVIDED THROUGH THE SYSTEM (INCLUDING BUT NOT LIMITED TO THIRD PARTY CONTENT) ARE PRIMARILY COMMUNICATION CONDUITS AND DO NOT AND CANNOT INDEPENDENTLY VERIFY OR REVIEW THE INFORMATION TRANSMITTED THROUGH THE SYSTEM FOR ACCURACY OR COMPLETENESS.

6.4 Limitation of Liability. IN NO EVENT SHALL IMA OR SYSTEM SUPPLIER BE LIABLE TO SUBSCRIBER, TO ANY END-USER, OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGE OR LOSS, OR FOR ANY DAMAGE OR LOSS ASSOCIATED WITH DELAY, LOSS OF USE, LOST REVENUES, MISSED OPPORTUNITY, OR OTHERWISE, THAT MAY RESULT FROM A BREACH OF THIS IMA RX ADDENDUM, EVEN IF IMA HAS BEEN ALERTED TO THE POSSIBILITY OF ANY DAMAGE OR LOSS. UNDER NO CIRCUMSTANCES SHALL IMA'S LIABILITY PURSUANT TO THIS IMA RX ADDENDUM EXCEED THE TOTAL AMOUNT OF FEES PAID BY SUBSCRIBER FOR THE ONE MONTH PERIOD LEADING UP THE EVENT TRIGGERING THE LIABILITY. NEITHER IMA, NOR SYSTEM SUPPLIER SHALL BE LIABLE FOR ANY DAMAGES OR COSTS INCURRED AS A RESULT OF SUBSCRIBER'S FAILURE TO OBTAIN AND/OR MAINTAIN ANY NECESSARY APPROVALS OR CERTIFICATES REQUIRED BY THE RELEVANT PROVISIONS OF THE DEA REGULATIONS.

6.5 Indemnification. Subscriber shall indemnify and hold IMA, System Supplier and Third Party Content Providers harmless against any third party claims relating to or caused by (a) a medical error by Subscriber or one of its End Users; (b) misuse of the System by Subscriber or one of its End Users; (c) breach of this IMA Rx Addendum by Subscriber or one of its End Users or (d) physical injury or death resulting from a prescription issued by Subscriber or one of its End Users.

6.6 Acknowledgement of Allocation of Risk. Subscriber acknowledges that the disclaimers, liability limitations, indemnification provision, and use restrictions constitute a condition precedent for the willingness of IMA to allow Subscriber and its End Users to access the System. Subscriber acknowledges that without the inclusion of those provisions, IMA would not agree to grant a sublicense to Subscriber and enter into this IMA Rx Addendum.

6.7 EPCS Prescribers. IMA and System Supplier expressly disclaim any liability for damages or costs incurred as a result of Subscriber's failure to obtain or maintain any necessary approvals or certifications required by the relevant provisions of the DEA Regulations.

### Section 7: General Provisions

7.1 Third Party Beneficiary. It is agreed by the parties hereto that System Supplier is a third party beneficiary to the terms and conditions of this IMA Rx Addendum.

7.2 Choice of Law. Notwithstanding anything to the contrary in Section 8 of the Agreement, this IMA Rx Addendum shall be exclusively governed and construed under the laws of the State of Michigan, without regard to its conflict of law principles.

7.3 Disputes. Notwithstanding anything to the contrary in Section 8 of the Agreement, should any legal action, arbitration, or other legal proceeding be commenced to resolve any dispute under this IMA Rx Addendum:

a. subject to Section 8 of the Agreement, the prevailing Party shall be entitled to an award of litigation expenses, interest, and reasonable attorney fees, in addition to any other remedy obtained;

b. subject to Section 8 of the Agreement, each Party hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this IMA Rx Addendum must be instituted in either the state or federal courts located in New York County, New York;

c. each Party (a) consents to the exclusive jurisdiction of such courts, (b) waives any objection relating to the basis for personal or in rem jurisdiction or to venue which such Party may now or hereafter have in any such legal action or proceeding, and (c) agrees not to claim any immunity (whether characterized as sovereign immunity or otherwise) from suit, from the jurisdiction of any such court, from attachment prior to or in aid of execution of a judgment from such court, or from execution of a judgment from such court;

d. if any provisions of this IMA Rx Addendum is declared partly or wholly unenforceable by a court or other tribunal having jurisdiction, such provision shall be enforced to the maximum extent permissible and the remaining portions of this IMA Rx Addendum shall remain in full force and effect; and

e. each Party agrees that any judgment rendered within the United States may be enforced in any country where the judgment debtor can be found or has assets; each party also agrees that no defense or challenge concerning the validity or enforceability of such judgment shall be asserted unless first raised in a United States court of competent jurisdiction.

7.4 No Partnership; No Joint Venture. This IMA Rx Addendum shall not be construed as creating an employment, joint venture, partnership, or other fiduciary relationship between the Parties.

7.5 Waiver. Silence, acquiescence, or inaction shall not be deemed a waiver of any right relating to this IMA Rx Addendum. A waiver shall only be effective if it is in writing and signed by the Party to be charged. Any such waiver shall not be construed as a continuing waiver or as a waiver of any other breach of a same or similar nature.

7.6 Entire Agreement. This IMA Rx Addendum constitutes the entire agreement between the Parties concerning the System and its use, and supersedes all prior negotiations, understandings and agreements, if any, between the Parties respecting the System and its use, whether oral or written. This IMA Rx Addendum may only be amended or modified by written instrument signed by authorized officers of both Parties; provided that it is expressly understood that should Subscriber at any time add EPCS Prescribers to its subscription for IMA Rx, the Parties shall enter into an amendment to this IMA Rx Addendum providing for the additional terms, conditions and fees that apply to use of the System by EPCS Prescribers. Because both Parties are sophisticated and knowledgeable business enterprises with ready access to legal counsel, the principle of construing an ambiguous provision or provisions against the drafter shall be disregarded when construing this IMA Rx Addendum.

7.7 Titles and Headings. Titles and headings throughout this IMA Rx Addendum are for convenience only and are not part of this IMA Rx Addendum.

7.8 No Assignment. This IMA Rx Addendum may not be assigned by either Party without the express written permission of the other Party, except that IMA may assign this IMA Rx Addendum without Subscriber's permission in the context of a merger or divestiture involving all or substantially all of the assets relating to this IMA Rx Addendum. Any attempted assignment that is contrary to the terms of this Section 7.8 is void ab initio and shall have no impact whatsoever.

IN WITNESS WHEREOF, the Parties hereto have executed this IMA Rx Addendum as of the date first written above.

**IMA SYSTEMS LLC**

**ALBANY COUNTY DEPARTMENT OF  
MENTAL HEALTH**

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

Barry Sempel, President

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

Name: Philip F. Calderone

Title: Deputy County Executive

11/30/11