



MaxMD (“MaxMD”)

Authorized End User Agreement (“Agreement”)

General Terms:

BY ACCESSING, USING, INSTALLING OR COPYING MAXMD’S PROPRIETARY, APPLICABLE ENCRYPTED, HOSTED DIRECT MDEMAIL® ACCOUNTS, ENCRYPTION AS A SERVICE (EaaS™), DOMAIN NAMES AND DATA ENCRYPTION SERVICE SUBLICENSSED TO YOU PURSUANT TO YOUR AGREEMENT WITH MAXMD’S CUSTOMER, AND AS MORE FULLY DESCRIBED AT WWW.MAX.MD] (THE “SERVICE”), YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, DO NOT ACCESS, USE, INSTALL OR COPY THE SERVICE.

IF YOU (“YOU”) ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT COMPANY OR LEGAL ENTITY TO THIS AGREEMENT, AND ALL REFERENCES TO YOU WILL BE DEEMED TO INCLUDE SUCH COMPANY OR ENTITY.

WARNING: THE SERVICE IS PROTECTED BY COPYRIGHT LAW AND INTERNATIONAL TREATIES. UNAUTHORIZED REPRODUCTION, DISTRIBUTION OR USE OF THE SERVICE, OR ANY PORTION OF IT, MAY RESULT IN SEVERE CIVIL AND CRIMINAL PENALTIES, AND WILL BE PROSECUTED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

1. License Grant.

1.1. Production License. Upon your registration for use of the Service by MaxMD or its authorized reseller of the Service, and subject to your compliance with this Agreement and your agreement with such authorized reseller (the “Customer Agreement”), MaxMD grants you during the Term (as defined below) a non-exclusive, non-transferable, non-sub-licensable, limited right and license to access and use the Service solely for the transmission and receipt of data related to MaxMD’s Service. The rights granted to you herein are (a) subject to your compliance with the terms and conditions of this Agreement and the Customer Agreement; and (b) shall terminate upon the termination or expiration of this Agreement or your Customer Agreement for any reason. All rights in and to the Service, and MaxMD’s and its vendors’ software and systems used to provide the Service, are hereby expressly reserved to MaxMD.

1.2. Support. Provided either you or your authorized reseller have paid MaxMD all fees owed for support, MaxMD will allow you, if you are an individual, or two (2) of your



representatives, if you are a company or other entity, in each case reasonably knowledgeable in the operation of the Service to contact MaxMD with technical questions with respect to the Service and to report Service outages or failures. MaxMD will provide a representative or help desk during MaxMD's normal business hours (excluding holidays) to answer such technical support questions from your representatives. Normal business hours are 9:00a.m to 6:00p.m. Monday through Friday, prevailing Eastern Time. You acknowledge and agree that except as expressly provided in this Section 1.2, MaxMD does not grant you any right to receive maintenance or support with respect to your use of the Service

1.3. Data Encryption. MaxMD will provide, or cause to be provided, the current type of encryption set forth at WWW.MAX.MD In regards to disaster recovery, and solely to the extent applicable to the Service provided to you, incremental backups of such data shall be done once a day and full backups of databases shall be done once per week. The backup information shall be stored on media in a secure facility in the United States.

1.4. Restrictions.

(a) You may only access and use the Service in accordance with all applicable laws, rules and regulations. Without limiting the foregoing, you shall not, and shall not permit any other person to:

(i) Access or use any portion of the Service, or MaxMD's software or systems used to provide the Service, except as expressly provided herein or as otherwise authorized by MaxMD in writing;

(ii) Use the Service in violation of any Acceptable Use Policy established by MaxMD from time to time which applies generally to users of the Service;

(iii) Cause or permit decompilation or reverse assembly of all or any portion of the Service, or MaxMD's software or systems used to provide the Service ;

(iv) Disclose or publish performance benchmark results or test results to non-affiliated third parties with respect to the Service, or MaxMD's software or systems used to provide the Service, without MaxMD's prior written consent in each instance;

(v) Export the Service or any applicable documentation in violation of U.S. Department of Commerce export administration regulations;

(vi) Delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on or in the Service, or MaxMD's software or systems used to provide the Service, or related documentation.

(b) You further warrant to MaxMD that you shall not, in connection with any Direct mdEmail® accounts, do any of the following, or permit any other person to do any of the following:



- (i) Sell products or services that are unlawful in the location at which the content is posted or received;
- (ii) Incorporate into mdEmail® any material, text, graphic, sound or animation in any form that, without limitation, may be obscene, defamatory, harassing, grossly offensive, malicious, or that actually or potentially infringes or misappropriates the copyright, trademark, proprietary or other intellectual property right of any person;
- (iii) Post any content that advocates, promotes or otherwise encourages violence against any governments, organizations, groups or individuals or which provides instruction, information or assistance in causing or carrying out such violence;
- (iv) Introduce viruses, worms, harmful code, trojan horses on the Internet, and/or use any software or device to interfere or attempt to interfere with the proper functioning of any server or other Internet facilities;
- (v) Harass, whether through language, frequency, or size of messages;
- (vi) Send mdEmail® to any person who does not wish to receive it;
- (vii) Send unsolicited bulk mail messages ("junk mail" or "spam") which, in MaxMD's sole judgment, are disruptive or generate a significant number of user complaints. This includes bulk-mailing of commercial advertising, informational announcements and political tracts;
- (viii) Forward or otherwise propagate chain letters and pyramid schemes, whether or not the recipient wishes to receive such mailings;
- (ix) Send malicious email, such as "mailbombing" or flood a user or site with very large or numerous pieces of email;
- (x) Forge header information; or
- (xi) Collect replies to messages sent from another Internet Service Provider where those messages violate this Agreement or the Acceptable Use Policy of that other provider.
- (xii) Allow Authorized Users to access the Organization Level or Account Level Direct Certificates used to encrypt or decrypt Direct Secure Messages without having properly notified and proofed the Authorized User in accordance with Direct Secure Messaging standards, as established by DirectTrust.org, this Agreement and the MaxMD Agent Registration Agreement.

(xiii)

1.5. Compliance with Law; Customizations to Service. MaxMD, as part of the Service, uses commercially reasonable efforts to modify the Service to comply with



ONC/NwHIN Direct standards, and other applicable U.S. federal or state regulations that directly impact the Service, once they have become defined and finalized and will use commercially reasonable efforts to complete such modifications by a time agreed to by the MaxMD and your authorized reseller of the Service. However, it is solely your responsibility to comply with HIPAA, privacy and other applicable laws to the extent applicable to your operations including, but not limited to, your use of the Service. You are solely responsible for determining whether your use of the Service is in compliance with applicable law. MaxMD makes no representation or warranty to you that the Service, or use of the Service, complies with applicable law.

1.6. Delivery. MaxMD will deliver the Service via currently-available electronic methodologies and the Service shall be deemed accepted upon delivery.

2. Authorized User Obligations.

2.1. Resources. You are solely responsible for providing all resources, equipment, hardware and software at your facilities which are necessary for you to access or use the Service, including access to any telecommunication lines, links or other connectivity necessary to provide you with access to and use of the Service. To the extent provision of the Service requires data, documents, information or materials of any nature to be furnished, in whole or in part, by you, you will furnish such data, documents and information in a manner which permits MaxMD to provide the Service.

2.2. Accuracy and Completeness of Data. As between MaxMD and you, you shall be solely responsible for the accuracy and completeness of all Data transmitted by you through the Service. MaxMD does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any Data transmitted through the Service.

2.3. Taxes. Excluding taxes based on MaxMD's net income, you, or your authorized reseller, are liable and responsible for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, and all duties, tariffs and customs fees relating to your use or receipt of the Service.

3. Representations and Warranties.

3.1. MaxMD Representations and Warranties. MaxMD represents and warrants to you that the applicable portions of the Service licensed to you by your authorized reseller shall provide the applicable functionality described at WWW.MAX.MD. In the event of any breach of the foregoing warranty, MaxMD shall at its option, and as your sole and exclusive remedy: (a) re-perform the nonconforming Service, or (b) repair or replace the nonconforming portion of the Service to make it conforming, or (c) refund the fees paid to MaxMD (whether by you or your authorized reseller) for the nonconforming portion of the Service. Notwithstanding the foregoing, MaxMD will have no obligation to provide any such remedy if the non-conformity is caused by: (i) use of the Service other than in accordance with this Agreement and applicable documentation; (ii) any error, defect or non-conformance which cannot be reproduced by MaxMD; (iii) modification of the Service by anyone other than MaxMD; or (iv) any third party hardware, software, databases or systems which are not part of the Service.



3.2. Disclaimer of All Other MaxMD Warranties. YOU UNDERSTAND, ACKNOWLEDGE AND AGREE THAT EXCEPT FOR THE LIMITED EXPRESS WARRANTY SET FORTH IN SECTION 3.1, THE SERVICE IS PROVIDED “AS IS”, WITHOUT WARRANTY OF ANY KIND. MAXMD HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE WITH RESPECT TO THE SERVICE OR THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

3.3. Special Acknowledgements. You understand and agree that the Service, and MaxMD’s and its vendors’ software and systems used to provide the Service, may be subject to limitations, unavailability, delays and other problems inherent in the use of the Internet and electronic communications not provided by MaxMD. MaxMD is not responsible for any delays, delivery failures, or any loss or damage to the extent resulting from the same. MaxMD does not make any guarantees of speed or availability of end-to-end connections. You acknowledge and agree that MaxMD does not control the transfer of data over the Internet or to or from MaxMD’s technology platform and other portions of the Internet, and MaxMD does not warrant that it will be able to prevent third party disruptions of such transfers. MAXMD WILL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER RESULTING FROM CONNECTION TO OR USE OF THE INTERNET.

4. Intellectual Property Rights.

4.1. Ownership of MaxMD’s Intellectual Property. You acknowledges and agree that, as between you and MaxMD, all intellectual property rights and proprietary interests in and to the Service, and MaxMD’s and its vendors’ software and systems used to provide the Service, and all related documentation are vested solely in MaxMD and its vendors. You agree not to challenge the validity of MaxMD’s intellectual property rights or proprietary interests therein. Nothing herein shall be construed to convey any ownership or proprietary right or interest in or to the Service, or its or its vendors’ software and systems used to provide the Service, or related documentation, to you or any other person. Except as expressly provided herein, MaxMD hereby reserves any and all rights in and to the Service, and its and its vendors’ software and systems used to provide the Service, and all related documentation, including, but not limited to, all intellectual property rights and proprietary interests.

4.2. License to Transmit Data. You hereby grant MaxMD a license to receive and transmit Data through the Service as contemplated herein.

4.3. No Implied Licenses. Neither party shall be deemed to have any rights by implied license.

4.4. Restricted Rights. The Service was developed at private expense and is commercial, published and copyrighted. The Service may not be transferred to the U.S. government without the prior written consent of an officer of MaxMD and solely with “Restricted Rights”.



5. Term and Termination.

5.1. Term. Subject to payment to MaxMD of all fees owed for your use of the Service (whether by you or your authorized reseller), this Agreement shall be in effect for the lesser of (a) the initial term set forth in your Customer Agreement, or (b) three (3) years from the date you are granted access to or use of the Service, and unless your Customer Agreement does not provide for renewal, shall automatically renew for successive renewal terms of one (1) year each, unless MaxMD or your authorized reseller, on the one hand, or you on the other hand, notify the other at least sixty (60) days prior written notice of its intent not to renew this Agreement prior to the expiration of the initial term or then-current renewal term.

5.2. Termination for Cause. Either party may terminate this Agreement in the event the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days following the breaching party's receipt of a written notice from the non-breaching party setting forth the nature of such breach (unless the breach, by its nature, is curable but incapable of being cured within such thirty (30) day period, in which case the breaching party shall have a reasonable period of time thereafter provided it promptly commences to cure such breach and proceeds diligently therewith until cured).

5.3. Termination due to Legal Concerns. Either party may terminate this Agreement immediately, at any time, upon notice and without opportunity to cure, in the event a party reasonably believes, based upon advice of counsel, that any element of the Service violates any applicable law, rule or regulation.

5.4. Termination of Your Customer Agreement. Notwithstanding the renewal provisions above, in the event of termination of your Customer Agreement, this Agreement shall continue for the then-current initial term or renewal term, provided MaxMD has been paid all fees for such initial term or renewal term only (either by you or your authorized reseller). Otherwise, this Agreement shall terminate upon termination of your Customer Agreement.

5.5. Obligations Upon Termination. Upon termination or expiration of this Agreement for any reason, your access to the Service shall immediately cease and you shall be prohibited from further access to or use of the Service; and you shall immediately, at your cost and expense, return to MaxMD all of MaxMD's property including, but not limited to, any documentation and any confidential information or trade secrets of MaxMD in your possession.

6. Confidentiality.

6.1. Use of Data. During the Term, MaxMD will not gather, store, log, archive, use or otherwise retain personally identifiable health information ("phi") other than any incidental phi contained in hosted Direct mdemail@ accounts and will not disclose, distribute, sell, share, rent or otherwise transfer any such phi or Data to any third party, except as expressly provided or contemplated in this Agreement or as required by applicable law or as MaxMD may be expressly directed in advance in writing by you or your authorized reseller. MaxMD will use Data only in compliance with this Agreement. Further, MaxMD will not knowingly retain any Data for any period longer than necessary for MaxMD to fulfill its obligations under this Agreement and/or



your Customer Agreement. As soon as MaxMD no longer needs to retain such Data in order to perform its duties under this agreement, MaxMD will promptly return to you or destroy or erase all originals and copies of such Data to the extent reasonably possible and to the extent not prohibited by legal requirements; provided; however, that any phi will be destroyed or retained consistent with the business associate agreement between us and your authorized reseller. If it is not reasonably possible to return or destroy Data or such return or destruction is prevented by legal requirements, such Data shall nevertheless remain subject to the confidentiality provisions of this Agreement and no use or disclosure of such Data shall be made except for the purposes that prevented its return or destruction.

6.2. Confidentiality. During performance of this Agreement, in the event either party is provided and/or exposed to confidential information or trade secrets of the disclosing party, the receiving party shall hold as strictly confidential all confidential information and trade secrets of the disclosing party or its contractors, and the receiving party shall not sell, transfer, rent, use, disclose or otherwise make available, without the disclosing party's prior written consent, any of the confidential information or trade secrets of the disclosing party or its contractors to any person, except its employees and contractors to whom such information must be provided to carry out the purpose and intent of this Agreement, and who have agreed in writing to be bound by terms of confidentiality no less restrictive than those contained in this Section 6.

6.3. Exceptions to Obligations. Notwithstanding anything to the contrary contained in this Agreement, the receiving party shall not be obligated to treat as confidential, or otherwise be subject to the restrictions on use, disclosure or treatment contained in this Agreement for, any confidential information or trade secrets of the disclosing party which: (a) is rightfully known to the receiving party prior to its disclosure by the disclosing party; (b) is publicly available through no breach of the disclosing party; (c) is independently developed by the receiving party without use of the disclosing party's confidential information or trade secrets; or (d) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party. In addition, the receiving party may disclose confidential information and trade secrets of the disclosing party to the extent such disclosure is required by any rule, law, regulation, court, court order, or government or quasi-governmental authority, provided the receiving party notifies the disclosing party, if permitted by law, of the applicable legal requirements before such disclosure occurs so as to enable the disclosing party to obtain such protection as may be available to preserve the confidentiality of such information.

6.4. No Adequate Remedy; Survival. The receiving party agrees that the disclosing party will have no adequate remedy at law if there is a breach or threatened breach of this Section 6 and, accordingly, the disclosing party shall be entitled (in addition to any legal or equitable remedies available to such disclosing party) to injunctive or other equitable relief to prevent or remedy such breach. The obligations under this Agreement with regard to confidential information that constitutes a trade secret shall remain in effect during the term of this Agreement and for the longer of (a) as long as such information remains a trade secret, or (b) three (3) years after the expiration or termination of this Agreement. The obligations with regard to confidential information that does not constitute a trade secret shall remain in effect during the term of this Agreement and for three (3) years after the expiration or termination hereof.



7. Limitation of Liability.

7.1. Limitation of Liability. IN NO EVENT WILL MAXMD'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES TO YOU EVER EXCEED THE TOTAL FEES PAID OR PAYABLE TO MAXMD DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM FOR YOUR USE OF THE SERVICE (WHETHER BY YOU OR YOUR AUTHORIZED RESELLER), REGARDLESS OF THE FORM OF ACTION (WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE).

7.2. Exclusion of Certain Damages. IN NO EVENT SHALL MAXMD OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS, AGENTS, SUBCONTRACTORS OR REPRESENTATIVES BE LIABLE HEREUNDER FOR ANY LOSS OF DATA OR OTHER DAMAGES RESULTING FROM ANY DELAY OR DEFECT IN OR NON-DELIVERY OF ANY DATA TRANSMISSIONS OR SERVICE, NOR FOR ANY LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL OR OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY OF THE FOREGOING ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICE OR ANY BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT, WHETHER OR NOT MAXMD HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING AND REGARDLESS OF THE NATURE OF THE CLAIM OR FORM OF ACTION (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE).

8. Miscellaneous.

8.1. Force Majeure. MaxMD shall not be liable to you or any other person for any delay or failure to perform any provision of this Agreement to the extent such delay or failure to perform is caused by an act of God, war, terrorism, or any other extreme event beyond the reasonable control of MaxMD (including, without limitation, the failure of you to perform its obligations).

8.2. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersede all previous or contemporaneous agreements, proposals, understandings and representations, written or oral, with respect to the terms and conditions hereof. This Agreement may not be modified or amended except in a writing signed by both parties. You may have additional rights and obligations with respect to the Service under your Customer Agreement.

8.3. Notices. Except as explicitly stated otherwise, legal and other notices (including but not limited to notices of legal proceedings) shall be delivered to us by U.S. mail at MaxMD, 2200 Fletcher Ave, Suite 506, Fort Lee, New Jersey 07024 , or to you at the email address you provided us (a) at the time you registered; or (b) through a subsequent notice of an address change. Physical notices shall be effective when received. Email notices allowed hereunder shall be deemed given 24 hours after the email is sent, unless the sending party is notified that the email address is invalid. In addition, MaxMD may provide notice by certified mail, postage



prepaid and return receipt requested. In these situations, notice shall be deemed given when received

8.4. Severability. If any one or more of the provisions in this Agreement or any application of such provision is held to be invalid, illegal or unenforceable in any respect by a competent tribunal, the validity, legality and enforceability of the remaining provisions of this Agreement and all other applications of the remaining provisions will not in any way be affected or impaired by such invalidity, illegality or unenforceability.

8.5. Waiver. The waiver by either party of any default or breach of this Agreement shall not be effective unless given in a signed writing and shall not constitute a continuing waiver or waiver of any other or subsequent default or breach.

8.6. Assignment. You may not assign this Agreement or delegate any right or duty hereunder without the prior written consent of MaxMD; provided that this Agreement may be transferred to a successor to your business who acquires the Service licensed to you. Any other assignment by you without MaxMD's written consent shall be null and void.

8.7. Governing Law; Jurisdiction and Venue. The validity, construction, and enforcement of this Agreement, and the determination of the rights and duties of the parties, shall be governed by and construed in accordance with the laws of the State of New Jersey (excluding any choice of law principle that would result in the application of the laws of any other jurisdiction). Sole and exclusive jurisdiction and venue for purposes of any and all lawsuits, disputes, causes of action, arbitrations or mediations shall be in any appropriate forum in Fort Lee, New Jersey.

8.8. Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT, THE OBLIGATIONS HEREUNDER AND/OR THE PARTIES' RELATIONSHIP, WHETHER IN TORT OR CONTRACT, AT LAW OR IN EQUITY. YOU ACKNOWLEDGE THAT NEITHER MAXMD NOR ANY PERSON ACTING ON BEHALF OF MAXMD HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. YOU ACKNOWLEDGE YOU HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH INDEPENDENT COUNSEL OF YOUR OWN CHOOSING, SELECTED OF YOUR OWN FREE WILL. YOU FURTHER ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE MEANING AND RAMIFICATIONS OF THIS PROVISION. THIS PROVISION IS A MATERIAL TERM IN MAXMD'S EXECUTION OF THIS AGREEMENT.

8.9. Independent Contractors. Nothing in this Agreement shall be construed to create an agency, joint venture, partnership or other form of business association between the parties. The parties are independent contractors for all purposes.



8.10. Headings. The headings in this Agreement are for purposes of reference only and are not intended to affect the meaning or interpretation of this Agreement.