



MANAGEMENT INFORMATION AS A SERVICE SUBSCRIPTION AGREEMENT

J. Brasch Co., LLC, a Nebraska limited liability company, (“Provider”) grants the right to use the SUREnursing Advisor System (the “System”) to the Subscriber at the facilit(ies) listed on the latest Quotation provided by Provider to Subscriber (the “Quotation”), subject to the terms and conditions set forth in the Quotation and this Subscription Agreement.

Provider may modify this Subscription Agreement or the Services provided hereunder from time to time to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of System use, error corrections, enhanced functionality and third party content. Except for regulatory or safety modifications such modifications will not materially reduce the level of performance, security or availability of the Services. Subscriber’s continued use of the Services following modification to the Services or updates to this Agreement constitutes your consent to be bound thereby.

1. **Definitions.** As used in this Subscription Agreement, the following terms will have the following meanings:
 - 1.1 “Coverage Area” means the area marked on the Facility Floor Plan provided to Provider by Subscriber which is attached as Exhibit A to the Quotation.
 - 1.2 “Devices” means tablets, smartphones, desktop computers, laptops, or other devices as Provider may accommodate in the future, which caregivers will use to access SURE® Subject Information.
 - 1.3 “Onboarding Fee” means the nonrefundable fee associated with the initial or subsequent delivery to Subscriber of SURE Hardware.
 - 1.4 “Quotation” means the proposal submitted by Provider to Subscriber’s with respect to the Subscriber’s terms of use of the Sure Advisor System.
 - 1.5 “Documentation” means the specifications, installation manuals, technical manuals, user manuals, release notes, training materials, documents, drawings, and other tangible items delivered or otherwise made available to subscriber, relevant to the System.
 - 1.6 “Services” means access to the SURE Subject Information and the processing, storage, training, support, and reporting as made available to the Subscriber by the Provider.
 - 1.7 “Software” means Provider’s non-Subscriber facing application, which receives SURE® Subject Information from the SURE® Gateway, processes and converts the SURE® Subject Information to human readable form, and delivers it to the SURE® App, and the firmware and algorithms which operate the various SURE and Stealth® Pad components.
 - 1.8 “STEALTH® Pads” means the Provider’s proprietary pads, which are placed as an



- underlayment to a mattress, chair cushion, or other resting place and which detects and delivers to a SURE® Monitor information regarding pressure/weight changes above those underlayments which may indicate, among other things, that a SURE® Subject is no longer occupying that resting place.
- 1.9 “SUREnursing Advisor System” means a connected system of products, comprised of the STEALTH® Pads, SURE® Monitors and associated peripheral sensors, the SURE® Gateway, the Software, the SURE® App, and the Devices, which collectively detect changes in a SURE® Subject’s activity, movements, and presence on supported surfaces and communicate the changes through the Software to caregivers.
- 1.10 “SURE® Advisor Technology” means the Software and the SURE® App.
- 1.11 “SURE® App” means Provider’s Subscriber facing hosted application, which receives SURE® Subject Information from the Software and may be accessed by caregivers of the SURE® Subjects via a Device.
- 1.12 “SURE® Gateway” means a localized receiver that receives SURE® Subject Information from SURE® Hardware and delivers it to the Software. Commands generated by the Software are also sent to the SURE® Gateway for relay to SURE® Hardware.
- 1.13 “SURE® Hardware” means the STEALTH® Pads, Devices, SURE® Monitors, or other equipment provided to Subscriber by Provider in connection with the SUREnursing Advisor System.
- 1.14 “SURE® Monitors” means Provider’s proprietary monitors, which receive SURE® Subject Information from the deployed STEALTH® Pads and peripheral devices and delivers such information to the SURE® Gateway.
- 1.15 “SURE Reports” means the Reports derived from the SURE Subject Information and such additional SURE Reports as Provider may make available generally from time to time to Subscribers as a group.
- 1.16 “SURE® Subject Information” means the information collected by the STEALTH® Pads and Devices, delivered via the SURE® Monitors to the SURE® Gateway, and then to the Software, where it is processed and converted to human-readable form and delivered to the SURE® App for access, in the form of SURE Reports, by caregivers of SURE® Subjects.
- 1.17 “SURE® Subjects” means individuals who will receive care from caregivers using the SUREnursing Advisor System.
- 1.18 “System” means collectively the above defined terms, as applicable.



2. SURE® Hardware Components; Consumables

Provider will provide the SURE Hardware (and replacements thereof) and the ongoing services and reports identified herein and in the Quotation at the price and on the payment terms set forth therein, and upon the terms and conditions set forth below.

Subscriber understands and agrees that the quantities and prices contained in the Quotation are based on the SURE Hardware expected to be required in order to provide coverage for the designated number of SURE Subjects within Coverage Area, and that any structural barriers or other sources of interference to wireless transmissions found within the Coverage Area, or an increase in the size or configuration of the Coverage Area or the number of SURE Subjects being monitored, will result in an increase in the Onboarding and Service Fees contained in the Quotation.

Subscriber assumes all responsibility for the installation of the SURE Hardware at the Facility and agrees to furnish all supplies, labor, and other items necessary for installation of the SURE Hardware. Provider shall provide Subscriber with a User's Manual and Installation Instructions and with video conferencing or telephone support for Subscriber's installation activities.

Subscriber assumes all risks of damage to or loss of the SURE Hardware effective upon delivery of the SURE Hardware to the Facility, regardless of whether insured against. Title to the SURE Hardware will remain in Provider throughout the Term of the Subscriber's subscription to the Services

Provider will, at its option, repair or replace any defective Hardware component on an exchange basis with new or rebuilt parts at its expense, without charge to Subscriber throughout the Term of the Subscriber's subscription to the Services.

Provider will provide replacement STEALTH® sensor pads as needed at the end of their useful life at no charge.

EXCEPTIONS: Subscriber shall be responsible for replacing Pads and Hardware components should the SURE Hardware fail to be properly maintained by Subscriber or fail to function properly as a result of misuse, abuse, neglect, incorrect wiring, damage caused by disasters, such as fire, flood and lightning, damage caused by faulty or leaking batteries not supplied by Provider, service other than by Provider or units in use in violation of instructions furnished by Provider. Subscriber must obtain a return authorization number from Provider prior to returning equipment to Provider for service or replacement. Postage, insurance, or shipping costs incurred in presenting the SURE Hardware for service or replacement are Subscribers responsibility. Because each wireless system is unique, Provider disclaims liability for range, coverage, or operation of the SURE Hardware as a whole. Provider's responsibility shall not be enlarged and no obligation or liability shall arise out of Provider rendering of technical advice or service in connection with Subscriber's use of the SURE Hardware. Subscriber recognizes that a properly installed and maintained SURE Hardware system may only reduce the risk of events which might prompt a user to seek assistance. It does not ensure or guarantee that there will be no death, personal injury and/or damage to property. As a result, Provider does not claim that the SUREnursing System may not be compromised and/or circumvented,



or that the SUREnursing System will prevent any death, personal injury, and/or damage to property in circumstances which might prompt the use of the SUREnursing System, or that the SUREnursing System will in all cases provide adequate warning or protection.

3. Grant of Rights; Authorized Users; Restrictions On Use.

- 3a. Upon payment of fees and subject to continuous compliance with this Subscription Agreement, Provider hereby grants to Subscriber a renewable, non-exclusive, non-transferable, non-sublicensable, royalty-free, worldwide right for any Subscriber employee, contractor, or agent of Subscriber (each an "Authorized User") to access and use the System and Services, and to use, reproduce, and otherwise distribute the SURE[®] Subject Information during the Term of this Subscription Agreement as permitted hereunder. Subscriber acknowledges that this Subscription Agreement is a services agreement and Provider will own the SURE Hardware and will not be delivering copies of the Software or the raw SURE Subject Information to Subscriber as part of the Services.
- 3b. Except as expressly permitted hereunder, Subscriber shall not, and shall not permit or enable any third party to (i) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any portion of the System to any third party; (ii) derive or gain access to source code from, copy, translate, reverse engineer, decompile, disassemble, transmit, merge, modify, adapt, or host any aspect of the System; (iii) bypass or breach any security device or protection used for or contained in the System; (iv) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, copyright notices, warranties, disclaimers, proprietary rights, or other symbols, notices, marks, or serial numbers on or relating to the System; or (v) use the System for purposes of benchmarking or performing a competitive analysis thereof. For the purposes of this Section 3, references to the System shall also include the components thereof.

4. Fees

Subscriber agrees to pay the fees set forth in the Quotation for the use of the System and for the Services in accordance with the payment terms set forth therein. All fees and other amounts payable by Subscriber under the Quotation and this Subscription Agreement are exclusive of taxes and similar assessments, and Subscriber will pay all sales, use, personal property, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental or regulatory authority on the System, and any other amounts payable to governmental or regulatory authorities with respect to use of the System by Subscriber hereunder. Subscriber will indemnify and hold harmless Provider for any such taxes (plus penalties and accumulated interest), which may be imposed by one or more governmental entities. If Subscriber fails to make any payment when due, Provider may charge interest on the past due amount at the rate of eighteen percent (18%) per annum or the highest rate permitted under applicable law, whichever is lower. Subscriber shall be liable for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees and court costs. All amounts payable to Provider under this Subscription Agreement shall be paid by Subscriber to



Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason.

5. Documentation

The Documentation will describe the functions and features of the System, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Services. Subscriber shall have the right to make any number of additional copies of the Documentation at no additional charge.

6. Subscriber Obligations

Prior to accepting a Quotation governed by this Subscription Agreement, Subscriber is solely responsible for determining whether the SUREnursing Advisor System meets its technical, business or regulatory requirements. Provider will cooperate with Subscriber's efforts to determine whether use of the Services is consistent with those requirements. Additional fees may apply to any additional work performed by Provider involving changes to the Services requested by Subscriber. Subscriber remains solely responsible for its regulatory compliance in connection with Subscriber's use of the Services.

Subscriber has provided Provider with full and accurate information as to the Facility Floor Plan, and agrees to:

- (a.) at its cost and expense, prepare, construct and make such modifications to the Facility as may be necessary for the installation, use and operation of the System during the Term, assure that the Facility meets environmental requirements set forth in the System User's Manual and Installation Instructions, and obtain any necessary consent of the landlord or mortgagor or other third parties having an interest in the Facility, to install the System.
- (b.) obtain any necessary state or local building or usage permits, licenses and approvals, and other authorizations required by state administrative agencies or the Federal Communications Commission in order to install and operate the System in the Facility in accordance with the rules and regulations of any applicable federal, state or local regulatory agency. Neither Provider nor any of its employees is an agent or representative of the Subscriber in FCC or state regulatory matters or otherwise. Provider, however, may assist in the preparation of the license application at no charge to the Subscriber.
- (c.) provide suitable space required for the installation and operation of the System. Subscriber shall remove or install any necessary filters on equipment that could impair System function.
- (d.) provide electrical outlets as needed for the proper operation of the System. In cases where in-line transformers are substituted for plug-in transformers, in-line transformers must be installed by a qualified technician according to applicable state and local codes.
- (e.) Subscriber agrees to provide Provider on a timely basis with all information necessary to the installation and operation of the System, including resident room numbers, the location



of call points, and such other information as Provider may reasonably request.

- (f.) provide properly trained professional, technical, and support personnel and supplies required for the proper installation and performance of the System.
- (g.) use the System only at the Facility named herein for the purpose and in the manner it is designed for.
- (h.) as may be required or reasonably expected, provide consumer information to patients and their families on the nature and use of the SUREnursing Advisor System, and maintain a record of such disclosure.
- (i.) be responsible for the operation, maintenance, and management of, and all access to and use of, Subscriber's information technology infrastructure, including its computers, mobile devices, software, hardware, databases, electronic systems (including database management systems), networks, and internet connections, whether operated directly by Subscriber or through the use of third-party services.
- (j.) not permit the System, or parts thereof, to be removed from the Facility without Provider's written permission.
- (k.) not make any material change in the System without Provider's consent.
- (l.) maintain the System in good condition and repair, reasonable wear and tear excepted.

No transfer of this Subscription Agreement or of any interest hereunder and no injury to or loss of the System shall release Subscriber from its obligations hereunder.

7. Provider Obligations

- (a.) During the Term of this Subscription Agreement Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades and new releases to the Software and Services to facilitate: (i) the functionality of the Services, as described in the Documentation; (ii) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; and (iii) the Services work with the then-current version and the one prior versions of Mozilla Firefox, and Google Chrome Internet browsers.
- (b.) Provider will provide maintenance and support of the System (which subject to specific agreement may include onsite visits at the expense of the Subscriber with respect to published Professional Service fees and Provider's reasonable out-of-pocket costs), when and as contacted by an Authorized Representative. All support services are provided 24 hours per day, 7 days per week. In addition, other services will be provided on a time and material basis at such times or during such periods, as may be specified in a Schedule and mutually agreed to by the parties. All other services will be provided on a non-work for hire basis.



- (c.) Provider will use commercially reasonable efforts to make the System available ninety-nine percent (99%) of the time as measured over the course of each calendar month during the Term, excluding unavailability that is due, in whole or in part, to any: (i) act or omission by Subscriber or access to or use of the System that does not strictly comply with this Subscription Agreement or with instructions or training provided by Provider; (ii) Subscriber's internet connectivity; (iii) Subscriber's power outage; (iv) a force majeure event described in Section 21 below; (v) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Provider pursuant to this Subscription Agreement; (vi) scheduled downtime; (vii) disabling, suspension, or termination of the SURE[®] Advisor Technology pursuant to Section 14 below; (viii) outage created by a 3rd party outside the control of either Provider or Subscriber; or (ix) Subscriber's failure to properly use the System. In the event of a material failure of the SURE[®] Advisor Technology that causes the System to be completely unusable, the daily fees for each monitored STEALTH[®] Pad shall not be charged to Subscriber for the duration of the outage. In addition, in the event such a system-wide outage was caused by the Provider or the System, the monthly fees for facilities and units set forth in Schedule D shall be reduced on a daily pro rata basis for the duration of the outage. Provider has no obligation to issue any refund or credit any bill unless Subscriber reports the service failure to Provider immediately upon becoming aware of it and requests such refund or credit in writing within ten (10) days of the failure. Any refund or credit will be issued to Subscriber in the calendar month following the month in which the outage occurred. This Section 7 sets forth Provider's sole obligation and liability and Subscriber's sole remedy for any service level failure.
- (d.) Provider shall have the right to access the System in situ or remotely for the purpose of inspection and the performance of repairs at all reasonable times, upon reasonable advance notice and with a minimum of interference or disruptions to Subscriber's regular business operations.
- (e.) Subscriber shall be liable for, and shall indemnify Provider from and against, any damage to or destruction of the System caused by the misuse, improper use, or other intentional and wrongful or negligent acts or omissions of Subscriber's patients, visitors, employees, agents, and contractors, or use in violation of instructions furnished by Provider. In the event the System is damaged as a result of the misuse, improper use, or other intentional and wrongful or negligent acts or omissions of Subscriber's employees, agents, or contractors, or used in violation of instructions furnished by Provider, Provider may service or repair the System as needed and the cost thereof shall be paid by Subscriber to Provider immediately upon written request, together with reasonable attorneys' fees and costs incurred by Provider in collecting such amount from Subscriber. Any work so performed by Provider shall not deprive Provider of any of its rights, remedies or actions against Subscriber for such damages. Travel expenses to and from the Facility and on-site labor charges will be the Subscriber's responsibility if a reported problem is the result of any of the aforementioned circumstances, a change in repeater locations not otherwise authorized by Provider, or a change in the Facility, e.g. removal of a wall or other remodel or structural change or the presence of a new interference source in the environment not



present at the time of review of site plans, or during System installation.

- (f.) Upon receipt in Lincoln, Nebraska, by Provider of a shipment of any System components from the Subscriber, Provider will promptly repair or replace at its discretion the System or parts thereof at Subscriber's cost, and re-ship the repaired or replaced SURE Hardware to Subscriber's business address within five (5) working days of Provider's receipt of the System or parts thereof.

8. Training

Through the use of written training material, video training resources, and remote on-line video conferencing, and phone Provider will assist Subscriber's personnel with the initial installation and start-up of the System as outlined in Section 4 above. Subscriber may purchase on-site, in-person training in a separate agreement with Provider. The Quotation sets forth the name(s) of the initial Subscriber personnel who will be responsible for said installation and maintenance, as well as troubleshooting with respect to the System (the "Authorized Representatives"). The Authorized Representatives will completely undertake/review such training manuals, webinars, and other information made available by Provider so as to be trained for the responsibilities described in the immediately preceding sentence. The Authorized Representatives will also be the point of contact for Provider with respect to support and maintenance issues. Provider will be entitled to rely on, and will not be deemed to be in breach of, this Subscription Agreement, or negligent for having relied upon information and decisions delivered to it by, an Authorized Representative. Subscriber will notify Provider of any change in an Authorized Representative and will provide contact information for the personnel replacing such Authorized Representative.

9. System Access; Reports.

Subscriber shall have the right to access the SURE App during the Term of this Subscription Agreement in accordance with the specifications and upon the terms of this Subscription Agreement. Title in and to the Software and to the Documentation shall remain solely in Provider, and Subscriber shall only obtain a personal, nonexclusive right to access the SURE Reports and Documentation in connection with Subscriber's use of the System. Subscriber shall not have any rights, express or implied, in the Software or Documentation, except the right to access the SURE App and Documentation during the term of this Subscription Agreement. Subscriber shall not use, copy, or disclose the Software or Documentation except as permitted in this Subscription Agreement. Provider shall provide Subscriber with electronic access to the Sure Reports on an on-demand basis as set forth herein during the Term of this Subscription Agreement.

Provider's obligation under this paragraph shall also include updating and maintaining the Software for the System and updating the System on a timely basis as new releases of System Software become available. Required hardware updates shall be made available at no charge to the Subscriber to replace older versions. Discretionary upgrades and system expansions will be made available at a quoted onboarding cost.

Subscriber acknowledges and agrees that Subscriber does not and will not have or acquire under or in connection with this Subscription Agreement any ownership interest in the Software



or the System Hardware, or in any related intellectual property rights. To the extent the System includes any products or technology owned by any third party (“Third Party Materials”), Subscriber acknowledges that Provider does not own such Third Party Materials and that none of Provider’s representations, warranties, covenants, or agreements set forth herein apply with respect to the Third Party Materials. Subscriber will look directly to the third party manufacturers of the Third Party Materials to address breaches of warranty or of any other obligations of the third party manufacturer to Subscriber.

10. Subscriber Records.

Subscriber must maintain its own records of the SURE® Subject Information and SURE Reports delivered to it via the System. Unless otherwise agreed, for the period of the Subscription, Provider will maintain the SURE® Subject Information and Reports for a period of two years after it is first made accessible to Subscriber via a Device at no charge; and one hundred dollars per stored year for each additional year beyond two free years thereafter for up to twelve years in total if requested in writing by the Subscriber.

11. Use of SURE® Subject Information.

Subscriber hereby grants to Provider an irrevocable, non-exclusive, perpetual, royalty-free, worldwide license for any Provider employee, contractor, or agent or any other individual or entity authorized by Provider (a) to access, use, host, reproduce, store, enhance, supplement, and otherwise distribute the SURE® Subject Information to perform Provider’s obligations hereunder; and (b) to aggregate the SURE® Subject Information and use the aggregated information for its internal business purposes, to improve the System, and to share it in non-identifiable aggregated form with third parties. Subscriber acknowledges that the SURE® Subject Information does not contain names, contact information, health information, financial information, or any other information that can identify a SURE® Subject. Accordingly, Provider will not have access to “Protected Health Information” (“PHI”) or Electronic PHI, as defined in the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) and Security Standards Specifications for the Protection of Electronic PHI (“Security Rule”), 45 C.F.R. Parts 160 and 164, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended (the “Act”), including those amendments made by the Health Information Technology for Economic and Clinical Health Act (“HITECH”) found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111005. Subscriber accordingly acknowledges that it is solely responsible for compliance with the Act and HITECH as it pertains to the SURE® Subjects.

12. Term And Termination.

The Initial Term of this Subscription Agreement Commences as of the Effective Date and will continue in effect for a period of three (3) years from the date of acceptance by Subscriber of the Quotation provided by Provider to Subscriber (the “Initial Term”). Upon the expiration of the Initial Term, this Subscription Agreement shall automatically renew for additional successive three (3) year terms (each, a “Renewal Term” and all Renewal Terms, collectively with the Initial Term, the “Term”) unless the parties agree to different Renewal Terms. Provider shall



give Subscriber written notice of any increase in fees or prices not less than 90 days prior to the beginning of any Renewal Term. Either party shall provide written notice to the other of nonrenewal at least sixty (60) days prior to the end of the Initial Term or of any Renewal Term. This Subscription Agreement may be terminated at any time: (a) by Provider, effective on written notice to Subscriber, if Subscriber fails to pay any amount when due, where such failure continues more than five (5) days after Provider's delivery of written notice thereof ("Payment Failure"); (b) by Provider, upon written notice to Subscriber if three (3) or more Payment Failures occur in any six (6) month period; (c) by either party, effective on written notice to the other party, if the other party materially breaches this Subscription Agreement and such breach: (i) is incapable of cure, or (ii) if capable of cure, remains uncured for thirty (30) days after the non-breaching party provides the breaching party with notice of such breach; or (d) by Provider, effective immediately, if Subscriber (i) is dissolved or liquidated or takes any corporate action for such purpose, (ii) becomes insolvent or is generally unable to pay its debts as they become due, (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency law, (iv) makes or seeks to make a general assignment for the benefit of its creditors, or (v) applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property

13. Effect Of Termination.

Upon the expiration or termination of this Subscription Agreement for any reason, all rights, licenses, and authorizations granted to Subscriber hereunder will immediately terminate. Subscriber shall immediately cease all use of the System, and pay all amounts due to Provider. Upon the expiration or termination of this Subscription Agreement for any reason, Subscriber shall, at its expense, promptly return all SURE Hardware to Provider or pay Provider its published replacement fee thereof. The goods shall be packaged to prevent damages in shipment and insured by Subscriber. Each party shall return or destroy, and certify to such destruction, all Confidential Information of the other party then in its possession

14. Suspension Of Services.

Provider may temporarily suspend, or otherwise deny until cured, Subscriber's access to or use of all or any part of the System without incurring any resulting obligation or liability, if (a) Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; (b) Subscriber fails to comply with any material term of this Subscription Agreement, including its payment obligations; or (c) the SUREnursing Advisor System is accessed or used in a manner not authorized under this Subscription Agreement. Any monthly fee due or previously paid for the period of suspension or denial will be likewise suspended during said period and will be refunded (if prepaid) in the event of a termination.

15. Warranties.

Provider represents and warrants that it will provide the Services in a professional manner consistent with general industry standards and that the Services will perform substantially in accordance with the Documentation. If the Services provided to you for any given month during the Term were not performed as warranted, you must provide written notice to Provider no later



than five business days after the last day of that particular month.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND SUBSCRIBER HEREBY WAIVES, RELEASES AND RENOUNCES, ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF PROVIDER AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF SUBSCRIBER AGAINST PROVIDER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ITEMS OR SERVICES PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY OBLIGATION, LIABILITY RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF PROVIDER; AND (D) ANY OBLIGATION, LIABILITY RIGHT, CLAIM OR REMEDY FOR RANGE, COVERAGE OR OVERALL OPERATION OF THE SURE NURSING ADVISOR SYSTEM OR LOSS OF, OR DAMAGE TO THE SURE NURSING ADVISOR SYSTEM.

PROVIDER DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT PROVIDER WILL CORRECT ALL SERVICES ERRORS. OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. SUBSCRIBER ACKNOWLEDGES THAT PROVIDER DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PROVIDER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. NEITHER PROVIDER NOR ANY OF ITS LICENSORS OR OTHER SUPPLIERS WARRANT OR GUARANTEE THAT THE OPERATION OF THE SURE NURSING ADVISOR SYSTEM WILL BE UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE, NOR SHALL PROVIDER OR ANY OF ITS SERVICE PROVIDERS BE LIABLE FOR UNAUTHORIZED ALTERATION, THEFT OR DESTRUCTION OF SUBSCRIBER'S DATA, FILES, OR PROGRAMS.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSCRIPTION AGREEMENT, EACH PARTY WAIVES ANY CLAIM AGAINST THE OTHER FOR ITS OWN LOST PROFITS OR LOSSES DUE TO BUSINESS INTERRUPTIONS, LOSS OF USE OR LOST DATA, OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES HOWEVER, THE SAME MAY BE CAUSED, REGARDLESS OF THE FAULT, NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE, PASSIVE, OR OTHERWISE), PRE-EXISTING DEFECT, OR STRICT LIABILITY OF THE RELEASED PARTY DIRECTLY OR INDIRECTLY ARISING OUT OF THIS SUBSCRIPTION AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SUBSCRIPTION AGREEMENT, SUBSCRIBER AGREES THAT PROVIDER'S ENTIRE LIABILITY, AND SUBSCRIBER'S EXCLUSIVE REMEDY, IN LAW AND EQUITY OR OTHERWISE, WITH RESPECT TO THIS SUBSCRIPTION AGREEMENT IS SOLELY LIMITED TO THE AMOUNT PAID BY SUBSCRIBER TO PROVIDER IN THE SIX (6) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE FIRST CLAIM ARISES.



Except for actions for nonpayment or breach of Provider's proprietary rights, the parties agree that no action, regardless of form, arising out of or relating to this Subscription Agreement may be brought by either party more than one year after the cause of action has accrued.

16. Confidentiality

"Confidential Information" means all information, data, knowledge, and know-how (in whatever form and however communicated) of a confidential or proprietary nature disclosed by one party ("Disclosing Party") to the other party ("Receiving Party"), including, but not limited to, information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, Subscribers, pricing, and technical data. The parties agree that all Confidential Information shall be and remain the sole and exclusive property of the Disclosing Party and that no license or similar right is granted to Receiving Party except as provided hereunder. Except as provided hereunder, Receiving Party agrees (a) not to use any Confidential Information for any purpose other than the performance of this Subscription Agreement, and (b) not to disclose any Confidential Information to any person or entity, including any parent, subsidiary, or affiliate of Receiving Party, except such officers, directors, key employees, or legal or financial advisors of such Receiving Party (collectively, "Representatives") who have a need to know the Confidential Information for the performance of this Subscription Agreement and have agreed to abide by the terms of this Subscription Agreement. Receiving Party shall be responsible for any breach of this Subscription Agreement by its Representatives. Receiving Party further agrees to take all necessary precautions to avoid the unnecessary disclosure or use of the Confidential Information. The provisions of this Section 15 shall not apply to any information (a) which is or becomes known generally within the industry, except as a result of a breach by Receiving Party or its Representatives, of its obligations under this Subscription Agreement; (b) which Receiving Party can establish was in the possession of or known by Receiving Party prior to its receipt from Disclosing Party; or (c) is subsequently disclosed to Receiving Party by a third party that has a bona fide right to make such disclosure. In the event Receiving Party is required to disclose Confidential Information pursuant to law, regulation, or legal process, Receiving Party shall promptly provide Disclosing Party with notice of such requirement so as to enable Disclosing Party to seek a protective order or other appropriate remedy. In any event, Receiving Party shall disclose only that portion of the Confidential Information as is, in the written opinion of its counsel, required to comply with such law, regulation, or legal process.

17. Subscriber Indemnity

Subscriber agrees to read and follow all operating instructions provided with the System and to perform regular testing as specified in the operating instructions. If Subscriber fails to comply with all operating instructions, testing requirements, and warnings accompanying the System, Subscriber shall indemnify, defend and save Provider, its agents and employees harmless from and against all claims, liabilities and civil penalties, including costs and expenses (including attorney's fees) incident to Subscriber's failure to comply or incident to successfully establishing the right to indemnification for injury to or death of any person or persons, including employees of Subscriber, or for loss of or damage to any property, including the System, or for any incidental or consequential damages arising out of Subscriber's failure to comply.



18. Arbitration

Any controversy, dispute or claim of whatever nature arising out of, in connection with or related to this Subscription Agreement, or the interpretation, performance or breach thereof, or the provision of any services or goods hereunder, including without limitation any claim based on contract, tort or statute, shall be settled by final and binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association and conducted in Lincoln, Nebraska. The judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In any arbitration arising out of the enforcement of this Subscription Agreement, the prevailing party shall be entitled to be reimbursed for reasonable attorney's fees and arbitration costs and fees and all other costs and expenses incurred.

19. Data Security

Provider or its service providers have implemented administrative, physical, and technical safeguards to protect the SURE® Subject Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage, which are no less rigorous than accepted industry practices, and shall use reasonable commercial efforts to ensure that all such safeguards, including the manner in which the SURE® Subject Information is collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection laws, as well as the terms and conditions of this Subscription Agreement.

20. Indemnification

(a) By Subscriber. Subscriber shall indemnify, defend, and hold harmless Provider and its members, managers, and employees (each, including Provider, a "Provider Indemnitee") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers ("Losses") incurred by a Provider Indemnitee in connection with any claim, suit, action, or proceeding ("Action"), whether third party or direct, to the extent that such Losses arise out of or relate to any allegation: (a) of or relating to the negligence, abuse, misapplication, misuse, or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Subscriber, its employees, or independent contractors with respect to the System; (b) of or relating to use of the System by or on behalf of Subscriber that is outside the purpose, scope, or manner of use authorized by this Subscription Agreement, or in any manner contrary to Provider's instructions; and (c) of or relating to the SURE® Subject Information that is received by Provider by or through the System.



(b) By Provider. Provider shall indemnify, defend, and hold harmless Subscriber and its members, managers, and employees (each, including Subscriber, a “Subscriber Indemnitee”) from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (“Losses”) incurred by a Subscriber Indemnitee in connection with any claim, suit, action, or proceeding (“Action”), whether third party or direct, to the extent that such Losses arise out of or relate to any allegation: (a) of or relating to the negligence, abuse, misapplication, misuse, or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Provider, its employees, or independent contractors with respect to the System; or (b) of or relating to the SURE® Subject Information that is received by Provider by or through the System.

(c) Notice. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified under this Section 20. The indemnitee shall cooperate with the indemnitor, at the indemnitor’s sole cost and expense. The indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnitor’s sole cost and expense. The indemnitee’s failure to provide the notice required under this Section 20 will not relieve the indemnitor of its obligations under this Section 20, except to the extent that the indemnitor can demonstrate it has been materially prejudiced as a result of such failure. The indemnitee may participate in the proceedings with counsel of its choosing, at its own cost and expense. Neither party hereto may settle or resolve an Action by a third party without the prior written consent of the other party hereto, which may not be unreasonably withheld.

(d) Intellectual Property Infringement. If any aspect of the System is, or in Provider’s opinion is likely to be, claimed to infringe, misappropriate, or otherwise violate any third party intellectual property right, or if Subscriber’s use of the System is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense: (a) obtain the right for Subscriber to continue to use the System as contemplated by this Subscription Agreement; (b) modify or replace the System, in whole or in part, to seek to make the System (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality; or (c) by written notice to Subscriber, terminate this Subscription Agreement and require Subscriber to immediately cease any use of the System, provided that subject to Subscriber’s compliance with its post-termination obligations set forth in Section 13, Subscriber will be entitled to a refund of all fees actually paid by Subscriber to Provider during the six (6) month period prior to the effective date of termination. Third Party Materials are excluded from the applicability of this Section.

THIS SECTION 20(d) SETS FORTH SUBSCRIBER’S SOLE REMEDIES AND PROVIDER’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THIS SUBSCRIPTION AGREEMENT OR THE SURENURSING ADVISOR SYSTEM INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.



21. Force Majeure.

Neither Provider nor Subscriber shall be liable for any delay or damage due, occasioned, or caused as a result of a change in laws, orders, rules, or regulations applicable to the System, or by war, terrorism, systems failures, actions of the elements, or any other causes beyond the reasonable control of such party. Any delay due to any of the above causes shall not be deemed to be a breach or failure to perform this Subscription Agreement, or any part thereof; provided, however, that the party delayed by such event shall provide notice thereof to the other party as soon as reasonably possible, specifying all the facts relating thereto, the anticipated consequences thereof, and any proposed actions to be taken in mitigation of adverse consequences.

22. Insurance

Provider shall, at its own expense, procure and maintain in full force and effect during the term of this Subscription Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly qualified in those states (locations) where the Services are to be performed, covering the operations of Provider, pursuant to this Subscription Agreement: commercial general liability (\$1,000,000 per occurrence, \$2,000,000 aggregate); excess liability (\$2,000,000 per occurrence, \$2,000,000 aggregate); workers' compensation (statutory limits) and employers' liability (\$500,000 per accident); and, professional liability (\$1,000,000 per occurrence, \$1,000,000 aggregate). Subscriber shall be named as an additional insured in such policies which shall contain standard cross liability clauses. Provider shall cause the liability it assumed under this Subscription Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policy shall be primary without right of contribution from any insurance by Subscriber. Such policies shall require that Subscriber be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. Subscriber shall have the right to request an adjustment of the limits of liability for commercial general liability and professional liability insurance as Provider's exposure to Subscriber increases. Provider shall provide Subscriber with certificates of insurance evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide Subscriber with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.

23. Notices

Any notice required under this Subscription Agreement shall be provided to the other party in writing, or delivered in person or transmitted by email, or by first class mail, certified and return receipt requested, postage prepaid, at the address indicated herein, unless the party giving any such notice has been notified, in writing, of a change of such address. Notices to Subscribers generally may be given by means of a general notice on the Provider portal for the Services. Notices specific to Subscriber may be delivered by electronic mail to the e-mail address of Subscriber on record in Provider's account information.

24. Binding Agreement.



This Subscription Agreement shall be binding upon and inure to the benefit of any successor of Provider or Subscriber, and any successor shall be deemed as substituted for Provider or Subscriber, respectively, under the terms of this Subscription Agreement. As used in this Subscription Agreement, the term "successor" shall include any person, firm, corporation, or other business entity which at any time, whether by merger, purchase, or otherwise, acquires all or substantially all of the assets of the business of Provider or Subscriber or continues substantially the same business operated by Provider or Subscriber, respectively.

25. Modification of Agreement.

No amendment to or modification of this Subscription Agreement shall be valid unless in writing and duly executed by Provider and Subscriber.

26. Prior Agreements; Headings

This Subscription Agreement supersedes any and all other agreements, either oral or written, between the parties hereto and contains all of the covenants and agreements between the parties. The captions or headings in this Subscription Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision or section in this Subscription Agreement.

27. Assignment; Subcontracting.

This Subscription Agreement may be assigned by Provider in whole or in part. The Subscriber may not assign this Subscription Agreement in whole or in part without obtaining the prior written consent of Provider which consent shall not be unreasonably withheld

28. Relationship of Parties; No Solicitation of Employees

Provider is an independent contractor. Neither party has the right or authority to assume or to create any obligation or responsibility on behalf of the other party. This Subscription Agreement shall not be construed to create a joint venture or partnership between the parties. During the term of this Subscription Agreement and for a period of one (1) year thereafter, each party to this Subscription Agreement will not, without the prior written approval of the other party, solicit for employment any employee(s) of the other party or directly or indirectly induce any such employee to terminate his or her employment with the other party.

29. Applicable Law

This Subscription Agreement is governed by the substantive and procedural laws of the State of Nebraska and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in Lancaster County in Nebraska in any dispute arising out of or relating to the SUREnursing Advisory System or this Subscription Agreement



30. Export

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. Such export laws govern use of the Services (including technical data) and any Services deliverables provided under this Subscription Agreement, and Subscriber agrees to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). Subscriber agrees that no data, information, software programs and/or materials resulting from the Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws.

No agent, employee, or representative of Provider has any authority to bind Provider to any affirmation, representation or warranty concerning the System other than as contained in this Subscription Agreement, and unless an affirmation, representation, or warranty made by an agent, employee, or representative is specifically included in writing within this Subscription Agreement, it shall not be enforceable by the Subscriber. This Subscription Agreement can be modified or amended only in writing signed by both parties. In the event of any inconsistency between the terms of any purchase order submitted by Subscriber and the provisions of this Subscription Agreement, the terms hereof shall be controlling.

End of Subscription Agreement

DOC # 19.95049.12