

**MINNESOTA ENCOUNTER ALERT SERVICE (EAS)  
MULTI-PARTY PARTICIPATION AND SUBSCRIPTION AGREEMENT**

This Minnesota Encounter Alert Service (EAS) Multi-Party Participation and Subscription Agreement ("Multi-Party Agreement") is made as of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between:

**Audacious Inquiry, LLC ("Ai")**, individually, on behalf of the **State of Minnesota, acting through its Department of Human Services, Health Care Administration ("State")**, and on behalf of all other present and future EAS Participants; and the New EAS Participant identified in the signature block below ("**New EAS Participant**") on behalf of itself and its EAS Participant Users (as defined below). By executing this Multi-Party Agreement, New EAS Participant agrees to become a party to the Multi-Party Agreement among all present and future EAS Participants (as defined below), and as updated from time to time on the Minnesota EAS website.

**RECITALS**

Ai, pursuant to its September 15th, 2017 Professional Technical and SaaS Services Agreement ("MN-Ai Agreement") with the State, has deployed and is operating the Minnesota Encounter Alert Service ("EAS"), a service based on Ai's proprietary Encounter Notification Service (ENS®) software platform, which the State licenses from Ai. The function of the EAS is to enable information exchange inclusive of the ability to securely deliver real-time alerts to interested parties such as primary care practices, patient-centered medical homes, hospital readmission programs, and managed care organizations when certain patients or members of an EAS Participant experience a healthcare encounter.

As of the Effective Date, the EAS is being configured to provide information exchange and alerts only with respect to Minnesota Medical Assistance (MA) beneficiaries, but the State and Ai reserve the right to extend the service to address non-MA patients at a later date in accordance with then-current Governance Processes.

New EAS Participant intends to participate in the EAS Service as a sender and/or a receiver of data, or if applicable, as a conduit for the sending and receiving of data by its EAS Participant Users, as defined in the Terms and Conditions (attached hereto as Attachment B). Ai, as authorized by the State and the other EAS Participants, has approved such participation by New EAS Participant.

New EAS Participant's and its EAS Participant Users' access to and use of the EAS are subject to their compliance in all respects with all terms and conditions of this Multi-Party Agreement and the Terms and Conditions.

In consideration of the foregoing premises, and other good and valuable consideration, and intending to be legally bound, the parties hereto agree as follows:

1. **DEFINITIONS.** Capitalized terms not otherwise defined herein shall have the meanings given to them in the Terms and Conditions.
2. **MULTI-PARTY AGREEMENT.** New EAS Participant is hereby made a party to the Multi-Party Agreement, which includes the Attachments hereto, including but not limited to the Terms and Conditions attached hereto as Attachment B, and agrees to be bound by, and shall comply with, the terms thereof from the Effective Date, New EAS Participant shall be an "EAS

Participant” as that term is defined in the Terms and Conditions, and shall be subject to all of the duties and obligations and entitled to the rights and benefits of an “EAS Participant” as provided therein.

3. **INITIAL SUBSCRIPTION ORDER.** New EAS Participant hereby subscribes to the EAS for an initial Subscription Term pursuant to the initial Subscription Order attached hereto as Attachment A.

4. **ADDITIONAL EAS PARTICIPANTS.**

a. As set forth in Article 6 of the Terms and Conditions, upon acceptance of an Additional EAS Participant by Ai and the State in accordance with the then-current Governance Processes, Ai (on behalf of itself, the State and the EAS Participants) and the Additional EAS Participant will execute a multi-party agreement substantially similar to this Multi-Party Agreement. Upon execution and delivery of such Multi-Party Agreement, all then-current EAS Participants shall be deemed to be signatories to the new Multi-Party Agreement, with the result being that all then-current EAS Participants, including New EAS Participant (if it is still an EAS Participant at the time), and Additional EAS Participant are all bound by the Terms and Conditions.

b. As further set forth in Article 6 of the Terms and Conditions, Ai and the State may agree at any time to delegate or assign to another entity such as a governance committee the authority to (i) accept Additional EAS Participants and (ii) execute multi-party agreements with Additional EAS Participants, in which event all references to Ai in this Section 4 shall be deemed to refer to such delegate or assignee.

5. **TERM AND TERMINATION.** This Multi-Party Agreement shall remain in force with respect to all then-participating EAS Participants until the earlier of (i) December 31, 2019 or (ii) termination of the Multi-Party Agreement with respect to all EAS Participants pursuant to Section 10.1.a of the Terms and Conditions. With respect to the December 31, 2019 expiration date, the Multi-Party Agreement shall auto-renew as to all then-current EAS Participants unless Ai or the State provides notice of non-renewal to all EAS Participants on or before September 30, 2019. Subject to the foregoing, this Multi-Party Agreement shall remain in force with respect to New EAS Participant, and New EAS Participant shall remain an EAS Participant, until the expiration or termination of its status as an EAS Participant pursuant to the Terms and Conditions.

6. **ENTIRE AGREEMENT.** This Multi-Party Agreement and all of the attachments herein contain the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

NOW THEREFORE, intending to be legally bound hereby, Ai and New EAS Participant, by their authorized signatories, have executed this Multi-Party Agreement as of the Effective Date.

<b>AUDACIOUS INQUIRY LLC</b>	<b>NEW EAS PARTICIPANT</b> <b>Participant Name:</b> <hr/>
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By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

	<b>ADDRESS FOR NOTICES TO NEW EAS PARTICIPANT</b>  _____  _____  _____  _____
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**ATTACHMENT A TO MULTI-PARTY  
PARTICIPATION AND SUBSCRIPTION AGREEMENT  
INITIAL SUBSCRIPTION ORDER**

This Subscription Order describes the initial subscription details including the fee schedule and any special terms associated with participation in the specified service. Additional Subscription Orders may be executed to codify additional levels of participation in the EAS.

***EAS Participant Type***

- ◆ Hospital, health system, or other institutional health care provider
- ◆ Accountable care organization (ACO)
- ◆ Minnesota Integrated Health Partnership participant (IHP)
- ◆ Health information organization (HIO) or other health information exchange (HIE) network
- ◆ Individual health care provider (physician, etc.)
- ◆ Group practice or legal entity (PA, LLC)
- ◆ Other [describe] \_\_\_\_\_

***EAS Service Definition***

Real-time alerts of Emergency or Inpatient hospitalizations or discharges for attributed patients that are MN Medical Assistance Beneficiaries.

***Implementation and Integration Fees***

There will be no implementation or integration fees charged to EAS Participant for the Ai costs to enable the EAS Service for those integration methods outlined in the Specifications. Costs for the EAS Participant to integrate into their local electronic health record (EHR) systems are the responsibility of the EAS Participant.

***Subscription Fee Schedule***

Note: The fee schedule will include the patients or members costs and any special pricing terms.

#	Service	Subscription Fees
1	EAS for IHP Beneficiaries	\$0 (paid by MN DHS)
2	EAS for Medical Assistance Beneficiaries	\$0 (paid by MN DHS)

***Term***

The Subscription Term of this Subscription Order begins on \_\_\_\_\_, 20\_\_\_\_, and shall be co-terminous with the Term of EAS Participant's joinder in the EAS Multi-Party Agreement (December 31, 2019 unless terminated earlier).



## **ATTACHMENT B TO MULTI-PARTY PARTICIPATION AND SUBSCRIPTION AGREEMENT**

### **MINNESOTA MULTI-PARTY ENCOUNTER ALERT SERVICE (EAS) TERMS AND CONDITIONS**

These Minnesota Multi-Party Encounter Alert Service (EAS) Terms and Conditions are between all EAS Participants (as defined below), each of whom has signed a Multi-Party Agreement agreeing to become a party hereto.

#### **1. DEFINITIONS.**

Capitalized terms defined below shall have the meanings set forth therein when used in this Agreement. All other capitalized terms shall have the meanings ascribed to them throughout this Agreement.

##### **General Definitions**

1.1 “Additional EAS Participant” means, relative to existing EAS Participants as of a given date, another person or entity who becomes an EAS Participant on or after that date pursuant to a Multi-Party Agreement, as described in Article 6 of these Terms and Conditions.

1.2 “Applicable Law” means all applicable statutes and regulations of the State of Minnesota and any other State(s) or jurisdiction(s) in which the EAS Participant operates, as well as all applicable Federal statutes, and regulations.

1.3 “Documentation” means the standard printed or electronic documentation for the EAS, or any customized version of such documentation, provided to EAS Participants by Ai, as updated and modified by Ai from time to time.

1.4 “EAS” means the Minnesota Encounter Alert Service.

1.5 “EAS Access Policies” shall mean those written policies and procedures established for the EAS through Governance Processes established by agreement of the State and Ai that establish eligibility criteria for EAS Participants and govern the EAS Participants' ability to transact information using the EAS including, but not limited to, the Transaction of Message Content, as they may be amended from time to time by mutual agreement of the State and Ai. As of the Effective Date, the EAS Policies are set forth in the State/Ai document entitled “Minnesota Encounter Alert Service Access Policies”, Version 1E, posted at [\\*\\*\\*\\*\\*mneas.org/resources/](http://*****mneas.org/resources/). Updated versions shall be posted to the same page.

1.6 “EAS Multi-Party Agreement” means an EAS Multi-Party Agreement with an EAS Participant or Additional EAS Participant as described in Section 6.1.

1.7 “EAS Operations Workgroup” means the collaborative group of volunteer EAS Participants empaneled by the State in collaboration with Ai to provide feedback from time to time on EAS policies and procedures.

1.8 “EAS Participant” means an authorized participant in the EAS (as determined in accordance with eligibility criteria specified in the EAS Access Policies) who has executed an EAS Multi-Party Agreement with Ai.

1.9 “EAS Participant Data” means any data or information supplied by EAS Participant through the EAS (including data of EAS Participant Users), and any reports, data queries, responses to data queries, or other output generated by the EAS using or based on such data or information.

1.10 “EAS Participant User” means any person who has been authorized to Transact Message Content through the respective EAS Participant’s System in a manner defined by the respective EAS Participant. “EAS Participant Users” are limited to health care providers and employees, contractors, or agents of an EAS Participant. For the avoidance of doubt, EAS Participant Users will not include health plans. An EAS Participant User may act as either a Submitter, Recipient or both when Transacting Message Content.

1.11 “EAS Platform” means a website, intranet or extranet site, WAN or LAN network site, other online facility, or portions thereof, through which EAS Participants are provided remote access to the functionality of the ENS® Solution.

1.12 “EAS Subscription Fees” means the fees (if any) specified in a Subscription Order for access to or use of the EAS during an EAS Subscription Term.

1.13 “EAS Subscription Term” means the time period specified in this Agreement or an associated Subscription Order during which EAS Participant is granted the licenses and rights of access set forth in this Agreement.

1.14 “Encounter Alert” means a notification of a patient encounter transmitted using the EAS, including, but not limited to (a) an alert sent by an EAS Participant to the EAS, and (b) an alert sent by the EAS to an EAS Participant.

1.15 “ENS® Solution” means the software and services constituting Ai’s proprietary Encounter Notification Service solution for providing real-time hospital and practice encounter notification services, as it may be modified or updated by Ai from time to time.

1.16 “Governance Processes” means the set of activities and deliberations conducted by the State and Ai by mutual agreement. Governance Processes are expected to include collaboration with the Operations Workgroup or other multi-stakeholder advisory body empaneled to provide input related to the implementation and operations of the EAS. However, Ai and the State will have sole responsibility and discretion to manage the Governance Processes and to make related decisions regarding the EAS.

1.17 “Panel” means a list of Subscribed Beneficiaries submitted by an EAS Participant to the EAS to enable Alerts to the EAS Participant.

1.18 “Subscribed Beneficiary” means any individual member or patient submitted by an EAS Participant to the EAS Solution to enable Alerts to the EAS Participant.

1.19 “Subscription Order” means an order accepted by Ai under which EAS Participant subscribes to the EAS for a specific EAS Subscription Term.

1.20 “State” means the State of Minnesota, acting through its Department of Human Services, Health Care Administration.

### **Data Exchange Definitions**

1.21 “Breach” shall mean the unauthorized acquisition, access, disclosure, or use of Message Content while transacting such Message Content pursuant to this Agreement. This definition shall apply to any EAS Participant that is not a Covered Entity subject directly to the terms of HIPAA or a Business Associate of a Covered Entity. The term “Breach” does not include the following:

a. any unintentional acquisition, access, disclosure, or use of Message Content by an employee or individual acting under the authority of an EAS Participant if—

(I) such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the EAS Participant; and

(II) such Message Content is not further acquired, accessed, disclosed or used by such employee or individual; or

b. any acquisition, access, disclosure or use of information contained in or available through the EAS Participant's System where such acquisition, access, disclosure or use was not directly related to Transacting Message Content.

1.22 "Message" means an electronic transmission of an Encounter Alert or other Message Content Transacted using the Specifications. Messages are intended to include all types of electronic transactions as specified in the Specifications, including the data or records transmitted with those transactions.

1.23 "Message Content" means that information contained within a Message or accompanying a Message using the Specifications. This information includes, but is not limited to, Protected Health Information (PHI), de-identified data (as defined in the HIPAA Regulations at 45 C.F.R. § 164.514), individually identifiable information, pseudonymized data, metadata, digital credentials, and schema.

1.24 "Payment" shall have the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA Regulations.

1.25 "Permitted Purpose" has the meaning set forth in [Section 5.2](#).

1.26 "Recipient" means an EAS Participant that receives Message Content through a Message for a Permitted Purpose.

1.27 "Specifications" means the specifications adopted by the State and Ai from time to time to prescribe the data content, technical, and security requirements to enable EAS Participants to Transact Message Content. Specifications may include, but are not limited to, specific Network standards, services and policies.

1.28 "Submitter" means an EAS Participant who submits Message Content through a Message for a Permitted Purpose.

1.29 "Subscription Term" means the term of a subscription to the EAS under a Subscription Order.

1.30 "Transact" means to send, request, receive, assert, respond to, submit, route, subscribe to, or publish Message Content using the Specifications.

1.31 "Transaction Pattern" shall mean a type of information exchange service(s) enabled by the Specifications, such as submission of an Encounter Alert through a Message. The EAS Access Policies or Specifications will identify the Transaction Pattern(s) and the Specifications required to implement each Transaction Pattern. The Transaction Patterns may be amended from time to time through amendment of the EAS Access Policies or Specifications.

1.32 "Treatment" shall have the meaning set forth at 45 C.F.R. § 164.501 of the HIPAA Regulations.

## **2. LICENSE AND RIGHTS OF ACCESS.**

2.1 Subject to EAS Participant's compliance with all terms and conditions of this Agreement, Ai, on its own behalf and as agent for the State, hereby grants and shall grant to EAS Participant, and EAS Participant hereby accepts, a non-transferable, non-sublicensable (subject to [Section 2.3](#)), non-exclusive, limited license to (i) access and use the EAS, and the functionality of the software made available through the EAS, during the applicable EAS Subscription Term specified in a Subscription Order. Other than EAS Participant's use of the EAS as permitted under the terms and conditions of this Agreement, EAS Participant may not resell, distribute, use on a timeshare or service bureau basis, or use to operate a website or otherwise generate direct income from, the EAS.

2.2 Subject to [Section 2.3](#), the licenses and rights of access granted herein may not be sold, assigned, leased, sublicensed, or otherwise transferred or made available by EAS

Participant for use by third parties, in whole or in part, by EAS Participant without Ai's prior written consent.

2.3 If EAS Participant is a health information organization (HIO), health information exchange (HIE) network, accountable care organization (ACO), integrated health partnership (IHP), or other provider of gateway connectivity to its EAS Participant Users for whom it acts as a conduit, EAS Participant may allow such EAS Participant Users to access and use the EAS through EAS Participant's gateway to the EAS, subject to the terms and conditions of these Terms and Conditions.

2.4 EAS Participant shall not, and shall not permit any third party to: (a) create derivative works based on the EAS or any software made available through the EAS (although it may create compilations and derivative works of Encounter Alerts that it submits or receives, to the extent permitted by Applicable Law), (b) reverse engineer, decompile or otherwise attempt to discover the source code of, the EAS or any software made available through the EAS, (c) copy any features, functions or graphics of the EAS or any software made available through the EAS, (d) use the EAS to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual rights, (e) use the EAS to store or transmit malicious code, (f) interfere with or disrupt the integrity or performance of the EAS or any third-party data contained therein, or (g) attempt to gain unauthorized access to the EAS, or any programs made available through the EAS.

2.5 EAS Participant hereby acknowledges and agrees that the State, Ai, or their licensors respectively are the sole owners of all copyright, patent, trademark, trade secret and other proprietary or intellectual property rights in and to the EAS, ENS® Solution or ENS® Platform, including but not limited to the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, screen displays, and report formats associated therewith and trademarks associated or displayed therein. The State, Ai and its licensors respectively reserve all rights in and to the EAS, ENS® Solution and the ENS® Platform not expressly granted to EAS Participant hereunder.

2.6 EAS Participant as a Submitter shall not retain any ownership rights in Encounter Alerts transmitted by the EAS. However, nothing in this [Article 2](#) is intended to transfer to the State or Ai ownership or exclusive rights to use EAS Participant Data as supplied by EAS Participant, which EAS Participant shall continue to have rights to use for its own purposes. The State and Ai shall have the right to retain and use Message Content and EAS Participant Data, to the extent specified in [Article 5](#) and [Sections 10.1.e](#) and [10.1.f](#), as such retention and use may be further limited by the EAS Access Policies.

2.7 For the avoidance of doubt, in no event shall the State, in its capacity as a payor, receive access to raw or identifiable EAS Participant Data. However, the State may receive access to aggregated, de-identified usage reports based on the EAS Participant Data. The parties agree that it is foreseeable that a State program may qualify as an eligible EAS Participant under this Agreement in the future; therefore, notwithstanding the foregoing, nothing in this paragraph shall preclude the State, in the capacity of an EAS Participant, from properly receiving raw or identifiable EAS Participant Data after duly executing a joinder to this Multi-Party Agreement as an EAS Participant.

### **3. EAS SUBSCRIPTION FEES**

EAS Subscription Fees shall be as set forth in each applicable Subscription Order.

### **4. EAS PARTICIPANT GENERAL RESPONSIBILITIES.**

4.1 Except as otherwise provided herein, EAS Participant shall have sole responsibility for acquiring and maintaining EAS Participant's own technology environment,

including but not limited to data exchange interfaces, workstations, operating systems, servers, Internet access, and networks necessary to use or access the EAS. EAS Participant shall also be responsible for making any necessary modifications to firewalls, proxy servers and other hardware and software necessary to use or access the EAS.

4.2 EAS Participant is solely responsible for the content of any and all EAS Participant Data submitted by it or its EAS Participant Users through or by the EAS, and acknowledges that other EAS Participants and EAS Participant Users are solely responsible for their respective data submitted through or by the EAS. Neither the State nor Ai, nor their licensors, suppliers or partners accept, and each hereby expressly disclaims, any and all liability with respect to such content.

## **5. EAS PARTICIPANT DATA EXCHANGE RESPONSIBILITIES.**

### **5.1 Use of Messages and Message Content**

a. Permitted Purpose. EAS Participant shall only Transact Message Content for a Permitted Purpose.

b. Permitted Future Uses. Subject to this [Article 5](#), Recipients may retain, use and re-disclose Message Content in accordance with Applicable Law and the Recipient's record retention policies and procedures.

c. Management Uses. Subject to the terms of the Business Associate Agreement between the parties, Ai may request, and EAS Participant will not unreasonably withhold, reasonable information necessary for the administration or operation of the EAS. Notwithstanding the preceding sentence, in no case shall an EAS Participant be required to disclose information or PHI to Ai in violation of Applicable Law. Any information, other than Message Content, provided by an EAS Participant to Ai shall be labeled as Confidential Participant Information and shall be treated as such. Ai reserves the right to use Messages, Message Content, and other EAS Participant information to administer and operate the EAS system.

### **5.2 Permitted Purpose**

a. "Permitted Purpose" means one of the following reasons for which EAS Participants may legitimately Transact Message Content, subject to any additional limitations or use cases established by the EAS Access Policies or the Specifications, and in accordance with Applicable Law, inclusive of the Minnesota Health Records Act:

i. Treatment of the individual who is the subject of the Message including provider-based care coordination and care management

ii. Uses and disclosures pursuant to an Authorization provided by the individual who is the subject of the Message or such individual's personal representative as described in 45 C.F.R. § 164.502(g) of the HIPAA Regulations.

### **5.3 EAS Access Policies**

a. Compliance with EAS Access Policies. EAS Participant is responsible for determining whether and how to Transact Message Content based on the application of the EAS Access Policies and Specifications, and EAS Participant's own access policies. EAS Participant shall comply with (i) the portions of the EAS Access Policies identified as being applicable to EAS Participants, (ii) Applicable Law, (iii) this Agreement, and (iv) all applicable Specifications, in Transacting Message Content.

b. The State and Ai may jointly change or amend the EAS Access Policies and Specifications at their discretion after reasonable consultation with the Operations Workgroup (and at their option, other EAS Participants) in accordance with the applicable Governance Processes. All such changes shall comply with Applicable Law and the terms of this Agreement. Ai (or the State) shall provide all EAS Participants reasonable advance notice of such changes. Any changes will be effective



no earlier than ninety (90) days following adoption by the State and Ai, unless the State and Ai determine that an earlier effective date is required to address a legal requirement, a concern relating to the privacy or security of data, or an emergency situation. EAS Participants shall have no ownership or other property rights in EAS Access Policies or Specifications, and amendments thereto shall not require the consent of EAS Participants.

c. User Identification. EAS Participant shall be responsible for the identification and appropriateness of access for each person seeking to access the EAS as a Participant User of the EAS Participant. For EAS Participants that are acting as a Gateway, EAS Participant must enforce EAS Access Policies and Permitted Purposes defined in this Agreement.

#### 5.4 Enterprise Security

a. General. EAS Participant shall be responsible for maintaining a secure environment. EAS Participant shall use appropriate safeguards to prevent use or disclosure of Message Content other than as permitted by this Agreement, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of that Message Content, including those identified in the HIPAA Security Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and C. EAS Participant shall, as appropriate under either the HIPAA Regulations, or under Applicable Law, have written privacy and security policies in place.

b. Malicious Software. EAS Participant shall ensure that it employs security controls that meet applicable industry or Federal standards so that the information and Message Content being Transacted and any method of Transacting such information and Message Content will not introduce any viruses, worms, unauthorized cookies, trojans, malicious software, "malware," or other program, routine, subroutine, or data designed to disrupt the proper operation of a System or any part thereof or any hardware or software used by an EAS Participant in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause a System or any part thereof or any hardware, software or data used by an EAS Participant in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable. In the absence of applicable industry standards, EAS Participant shall use all commercially reasonable efforts to comply with the requirements of this [Section 5.4](#).

#### 5.5 Expectations Of Participants

a. If EAS Participant or an EAS Participant User receives Encounter Alerts or other Message Content for Treatment, if technically able, it shall have a corresponding reciprocal duty to provide Message Content for Treatment. All Message Content shall comply with Specifications, this Agreement, and Applicable Law. Nothing in this [Section 5.5.a](#) shall require a disclosure that is contrary to a restriction placed on the Message Content by a patient pursuant to Applicable Law.

b. Accuracy of Message Content. When acting as a Submitter, EAS Participant hereby represents that at the time of transmission, the Message Content it provides is an accurate representation of the data contained in, or available through, its system.

c. Express Warranty of Authority to Transact Message Content. To the extent EAS Participant is a Submitter and is providing Message Content to a Recipient, EAS Participant represents and warrants that it has sufficient authority to Transact such Message Content.

d. Participant Consent. Prior to Transacting Message content through EAS or submitting a Panel to EAS, EAS Participants shall comply with all applicable laws governing patient consent to the disclosure of information including all applicable statutes and regulations of the State of Minnesota, and any other State(s) or jurisdiction(s) in which the EAS Participant operates, as well as all applicable Federal statutes, and regulations and the EAS Access Policies.

5.6 Flowdown Obligations. Each EAS Participant shall be responsible and liable for ensuring its Participant Users' compliance with these Terms and Conditions.

## 6. ADDITIONAL EAS PARTICIPANTS

6.1 Upon acceptance of an Additional EAS Participant by Ai and the State in accordance with the then-current Governance Processes, Ai (on behalf of itself, the State and the EAS Participants) and the Additional EAS Participant will execute an EAS Multi-Party Agreement. Upon execution and delivery of such multi-party agreement, all then-current EAS Participants shall be deemed to be signatories to the new EAS Multi-Party Agreement, with the result being that all then-current EAS Participants and Additional EAS Participant are all bound by this Terms and Conditions.

6.2 Ai and the State may agree at any time to delegate or assign to another entity such as a governance committee the authority to (i) accept Additional EAS Participants and (ii) execute EAS Multi-Party Agreements with Additional EAS Participants, in which event all references to Ai as the future signatory of new EAS Multi-Party Agreements in this Article 6 shall be deemed to refer to such delegate or assignee.

## **7. AI DATA EXCHANGE RESPONSIBILITIES.**

7.1 Ai shall operate the EAS in accordance with (i) the MN-Ai Agreement and applicable Statements of Work thereunder, (ii) the portions of the EAS Access Policies identified as being applicable to Ai, as they may be amended from time to time by mutual agreement of the State and Ai, (iii) Applicable Law, (iv) this Agreement, and (v) all applicable Specifications, in Transacting Message Content.

7.2 Ai shall comply with its privacy and security obligations under the Data Sharing and Business Associate Agreement Terms and Conditions attached as Appendix 1 to the MN-Ai Agreement, as it may be amended from time to time by mutual agreement of Ai and the State, and any additional privacy and security obligations to EAS Participants under this Multi-Party Agreement.

7.3 Ai and the State shall be responsible and liable for ensuring their respective compliance, including the compliance of any employees and subcontractors, with the Terms and Conditions of this agreement.

7.4 Enterprise Security. Ai and the State shall be responsible for maintaining a secure environment. Ai and the State shall use appropriate safeguards to prevent use or disclosure of Message Content other than as permitted by this Agreement, including appropriate administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of that Message Content, including those identified in the HIPAA Security Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and C. Ai and the State shall, as appropriate under either the HIPAA Regulations, or under Applicable Law, have written privacy and security policies in place.

7.5 Malicious Software. Ai and the State shall each ensure that it employs security controls that meet applicable industry or Federal standards so that the information and Message Content being Transacted and any method of Transacting such information and Message Content will not introduce any viruses, worms, unauthorized cookies, trojans, malicious software, "malware," or other program, routine, subroutine, or data designed to disrupt the proper operation of a System or any part thereof or any hardware or software used by an EAS Participant in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause a System or any part thereof or any hardware, software or data used by an EAS Participant in connection therewith, to be improperly accessed, destroyed, damaged, or otherwise made inoperable.

## **8. DISCLAIMERS AND LIMITATIONS OF LIABILITY.**

8.1 DISCLAIMER OF OTHER WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, AI, THE STATE, AND THEIR RESPECTIVE LICENSORS AND TECHNOLOGY VENDORS (A) HEREBY DISCLAIM ALL EXPRESS OR IMPLIED

WARRANTIES INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND QUALITY; (B) MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE RELIABILITY, AVAILABILITY, TIMELINESS, SUITABILITY, ACCURACY OR COMPLETENESS OF THE EAS OR THE RESULTS THAT ANY EAS PARTICIPANT MAY OBTAIN BY USING THE SERVICES; AND (C) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF ANY PATIENT DATA RECEIVED FROM ANY EAS PARTICIPANT. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, INCLUDING SECTION 5.5.b, EAS PARTICIPANT PROVIDES THE EAS PARTICIPANT DATA AS-IS AND DOES NOT WARRANT THE ACCURACY OF THE EAS PARTICIPANT DATA.

8.2 PATIENT MATCHING AND OTHER ERRORS. WITHOUT LIMITING THE GENERALITY OF SECTION 8.1, AI, THE STATE, AND THEIR RESPECTIVE LICENSORS AND TECHNOLOGY VENDORS DO NOT REPRESENT OR WARRANT THAT THE OPERATION OR USE OF THE EAS WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE. IN PARTICULAR, (I) THEY DO NOT WARRANT AGAINST POSSIBLE ERRORS OR MISMATCHES WHEN MATCHING PATIENT IDENTITIES BETWEEN DISPARATE DATA SOURCES, ALTHOUGH AI WILL USE COMMERCIALY REASONABLE EFFORTS TO MINIMIZE BOTH “FALSE NEGATIVE” AND “FALSE POSITIVE” ERRORS OR MISMATCHES THAT COULD RESULT IN INADVERTENT DISCLOSURES OF PHI, AND (II) THEY DO NOT WARRANT AGAINST POSSIBLE ERRORS CAUSED BY SELF-PAY PATIENT ENCOUNTERS WITH EAS PARTICIPANTS OR THE RECEIPT AND ROUTING OF SENSITIVE HEALTH DATA SUBJECT TO SPECIAL PROTECTIONS, ALTHOUGH AI WILL USE COMMERCIALY REASONABLE EFFORTS TO MINIMIZE SUCH ERRORS.

8.3 EXCLUSION OF CERTAIN DAMAGES. IN NO EVENT SHALL THE STATE, AI, EAS PARTICIPANTS, OR THEIR RESPECTIVE LICENSORS AND TECHNOLOGY VENDORS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF ANY OF THEM HAVE BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. DAMAGES UNDER SECTION 8.4 SHALL BE DEEMED DIRECT RATHER THAN INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

8.4 DAMAGES FOR PRIVACY BREACHES. WITH RESPECT TO DAMAGES CAUSED BY A PARTY FOR BREACH OF SUCH PARTY’S PRIVACY OBLIGATIONS UNDER THIS AGREEMENT, THE BUSINESS ASSOCIATE AGREEMENT, OR APPLICABLE LAW, THE NON-BREACHING PARTY CAN RECOVER FROM THE BREACHING PARTY THE ACTUAL AMOUNT OF: (i) THE FINANCIAL PENALTIES OR FINES ASSESSED AGAINST THE OTHER PARTY BY GOVERNMENTAL AUTHORITIES DUE TO THE BREACH, (ii) THE OTHER PARTY’S REASONABLE EXPENSES INCURRED IN CONNECTION WITH INVESTIGATING AND REPORTING SUCH BREACH TO THE INDIVIDUALS WHOSE DATA WAS DISCLOSED OR (WHERE REQUIRED BY LAW) TO GOVERNMENTAL AUTHORITIES; (iii) THE ACTUAL COST TO THE OTHER PARTY OF CALL CENTER SERVICES ESTABLISHED FOR COMMUNICATIONS WITH INDIVIDUALS RELATING TO THE BREACH; (iv) THE ACTUAL COST OF ANY CREDIT MONITORING SERVICES THAT THE OTHER PARTY PURCHASES FOR THE PERSONS WHOSE DATA WAS DISCLOSED DUE TO THE BREACH; AND (v) INDEMNITY UNDER THE APPLICABLE BUSINESS ASSOCIATE AGREEMENT WITH RESPECT TO THIRD PARTY CLAIMS.

8.5 MAXIMUM LIABILITY. THE CUMULATIVE MAXIMUM LIABILITY OF THE STATE, AI, EAS PARTICIPANT, AND THEIR RESPECTIVE LICENSORS AND TECHNOLOGY VENDORS TO EAS PARTICIPANTS FOR ANY AND ALL CLAIMS, ACTIONS, PROCEEDINGS, DAMAGES, AND LIABILITIES ARISING IN CONNECTION WITH THE EAS, REGARDLESS OF THE NUMBER OF OCCURRENCES OR CLAIMS, SHALL BE LIMITED TO TEN MILLION DOLLARS (USD \$10 MILLION) IN AGGREGATE. NOTHING IN THIS SECTION 8 OR THIS AGREEMENT IS INTENDED TO WAIVE OR LIMIT ANY SOVEREIGN IMMUNITY OF THE STATE (OR OF AI AS AGENT FOR THE STATE, IF APPLICABLE) OR ANY OTHER STATUTORY LIMITATION ON THE STATE’S OR AI’S LIABILITY.



## **9. EAS PARTICIPANTS' LIABILITY AND NON-LIABILITY FOR OTHERS' ACTIONS**

9.1 EAS Participant Liability. Each EAS Participant shall be responsible for its acts and omissions and those of its EAS Participant Users. No EAS Participant shall be responsible for the acts or omissions of any other EAS Participant or such other EAS Participant's EAS Participant Users. Each EAS Participant shall be responsible for harm to third parties caused by the use or misuse of any password, login or other identifier issued to such EAS Participant or its EAS Participant User, to the extent that the actor's use or misuse was enabled by EAS Participant's or its EAS Participant User's negligence, willful misconduct, or breach of this Agreement. Notwithstanding any provision in this Agreement to the contrary, the State, Ai, and EAS Participants shall not be liable for any act or omission if a cause of action or liability for such act or omission is otherwise prohibited by Applicable Law. This Section 9.1 shall not be construed as a hold harmless or indemnification provision.

## **10. TERMINATION AND SUSPENSION.**

### **10.1 General**

a. Expiration or termination of the Multi-Party Agreement as a whole shall terminate all EAS Participants' and EAS Participant Users' participation therein.

b. EAS Participant may withdraw from and terminate its joinder in this Multi-Party Agreement and any of its Subscription Orders for its convenience, for any reason or no reason, on thirty (30) days' notice to Ai.

c. Either Ai on behalf of the State, or EAS Participant, may terminate EAS Participant's joinder in this Agreement or any or all Subscription Orders hereunder for material breach by the other party that is not cured within thirty (30) days after notice of such breach.

d. Ai on behalf of the State may immediately terminate EAS Participant's joinder in this Multi-Party Agreement and may terminate any or all Subscription Orders hereunder if EAS Participant becomes insolvent, liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for the relief of debtors, or initiates any proceeding seeking protection from creditors, or is the subject of any proceeding seeking protection from creditors that is not dismissed within ninety (90) days.

e. Subject to Section 10.1.f, upon expiration or termination of an EAS Participant's joinder in the Multi-Party Agreement for any reason, Ai shall promptly return or destroy, at the election of EAS Participant, all raw, identifiable patient data of EAS Participant provided to Ai, including any copies thereof, and shall delete database content that contains such data. In addition, Ai shall comply with the applicable terms and conditions of the Business Associate Agreement between EAS Participant and Ai attached hereto as Attachment C.

f. For the avoidance of doubt, EAS Participant agrees that Ai is not required to cause or ensure the return or destruction of transmitted Encounter Alerts that are in the possession of other EAS Participants following transmission; however, upon termination with respect to a specific EAS Participant, Ai is required to return or destroy (at EAS Participant's option) copies of such information submitted by EAS Participant that remain in Ai's possession following transmission. The foregoing does not require return or destruction of the following: minimum necessary Message Content which shall consist of no more than the submitting EAS Participant's medical record number (MRN) and the Message Date Time stamp.

10.2 The State and Ai reserve the right to immediately suspend, limit, or deny access to the EAS by EAS Participant (and any EAS Participant User accessing the EAS through EAS Participant) if either the State or Ai determines, in its sole reasonable discretion, that traffic originating from such EAS Participant is potentially fraudulent data or represents fraudulent activity, has been affected by malware, denial-of-service attacks, or similar security or system failures, is in violation of Applicable Law or EAS Access Policies, or is otherwise

compromised or could represent data or transmissions which could put at material risk the EAS, the EAS Platform, the State, Ai, other EAS Participants, patients, or third parties, or that EAS Participant has materially violated the prohibitions in [Section 2.4](#). The State and Ai will notify the EAS Participant prior to suspending, limiting, or denying access, unless exigent circumstances make such advance notice impractical or in violation of this Agreement or applicable law, in which case they will notify the EAS Participant as soon as reasonably practicable after the curtailment of access. The notification of the suspension, limitation, or denial of access will include the reasons for suspension, limitation, or denial.

10.3 All licenses and rights of access granted hereunder to EAS Participant and its EAS Participant Users shall terminate immediately upon expiration or termination of this Agreement or the applicable Subscription Term with respect to EAS Participant. The provisions of [Sections 2.2, 2.4, and 2.5](#) (License), [Article 8](#) (Disclaimers and Limitations of Liability), [Article 9](#) (No Liability for Other EAS Participants' Actions), [Article 11](#) (Confidential and Proprietary Information), and [Article 12](#) (Miscellaneous) as well as any other provisions of this Agreement necessary to interpret the respective rights and obligations of the parties hereunder, shall survive the expiration or termination of this Agreement.

## **11. CONFIDENTIAL AND PROPRIETARY INFORMATION.**

11.1 Definition. EAS Participant and Ai each acknowledge that the other Party is the owner of proprietary and confidential information, including, without limitation, software, business plans and strategies. All such information described in this paragraph, as well as the terms and conditions of this Agreement, shall hereinafter be referred to collectively as "Confidential Information." Confidential Information does not include information that: (i) is in the possession of the recipient free of any obligation of confidentiality at the time of its disclosure; (ii) is or becomes publicly known other than by a breach of this provision; (iii) is received without restriction from a non-Party free to disclose it; or (iv) is developed independently by the receiving Party without reference to or reliance on the Confidential Information.

11.2 Non-Disclosure. Each Party as a recipient of Confidential Information ("Recipient") shall use the other's ("Discloser's") Confidential Information only for purposes of performance or receipt of performance under the Agreement, and shall protect it from unauthorized disclosure using the same degree of care it uses for its own Confidential Information (but no less than a reasonable degree of care.) Neither Party as a Recipient may disclose the Discloser's Confidential Information to any third party (other than its attorneys, contractors, investors, lenders, or insurers bound by confidentiality obligations no less stringent than those set forth herein) without the Discloser's prior written consent, except as required by law or regulation provided that the Recipient notifies the Discloser to enable the Discloser to take protective measures with respect to the disclosure of its Confidential Information. Such consent shall not be unreasonably withheld with respect to requested disclosure to a Recipient's investors, lenders, contractors, or Subcontractors, provided that such persons are bound by confidentiality obligations no less stringent than those set forth herein.

## **12. MISCELLANEOUS**

12.1 Insurance. Ai will maintain general liability insurance with a general aggregate limit of not less than \$5 million. Ai will maintain Errors and Omissions Insurance with an event limit of not less than \$5 million. Ai will maintain Cyber Liability insurance with an event limit of not less than \$2 million per occurrence and \$10 million aggregate. Ai will ensure that its employees and agents providing Services hereunder are covered by workmen's compensation insurance.

12.2 Assignment. Neither Party may assign any rights or obligations under this Agreement to any person without the prior written consent of the other Party, except to a successor by merger, acquisition, or sale of substantially all of such Party’s business or assets. Ai may subcontract the performance of Services, but shall remain responsible for the acts and omissions of its subcontractors as though they were acts or omissions of Ai itself.

12.3 Binding Effect. This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.

12.4 Waiver. No waiver will be binding on a Party unless it is in writing and signed by the Party making the waiver. A Party’s waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

12.5 Notices. All notices or other communications required or permitted by this Agreement shall be in writing. Delivery can be made in person, by overnight courier of national reput, or by registered or certified mail, with return receipt requested, to the parties at their respective addresses as set forth below or to such other address as either Party shall give to the other Party in the manner provided herein for giving notice. Notice delivered personally shall be considered given at the time it is delivered. Notice by overnight courier or mail shall be considered given on the date received. In any case, such notice shall be addressed as follows:

<p>If to EAS Participant:</p> <p>To the address(es) for notice set forth below the signature block in EAS Participant’s joinder in the Multi-Party Agreement</p>	<p>If to Ai:</p> <p>Audacious Inquiry, LLC 5523 Research Park Drive Suite 370 Baltimore, MD 21228 Attn: Scott Afzal, Partner (safzal@ainq.com)</p> <p>With a copy to the State at:</p> <p>Minnesota Dept. of Human Services 540 Cedar Street St. Paul, MN, 55101 Attn: Jackie S. Sias</p>
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12.6 Attachments. Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement.

12.7 Amendment. This Agreement may be amended only by a subsequent written document signed by both parties.

12.8 Validity. If any term or provision of this Agreement is deemed invalid or unenforceable, such term or provision shall not invalidate the rest of this Agreement, which shall nonetheless remain in full force and effect as if such invalidated or unenforceable term or provision had not been made a part of this Agreement.

12.9 Third-Party Beneficiaries. The parties do not intend to confer any right or remedy on any third party through this Agreement, including EAS Participant Users, their clients or patients, or other downstream users of EAS services.

12.10 Governing Law. This Agreement is governed by the laws of the State of Minnesota, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.

12.11 Arbitration. Except as otherwise provided herein, any controversy or claim arising out of or relating to this Agreement or the Services will be adjudicated exclusively by arbitration in St. Paul, Minnesota in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association. If the amount in controversy is \$250,000 or less, the matter will be heard by a single arbitrator. If the amount in controversy is greater than \$250,000, the matter will be heard by a three-arbitrator panel. Each arbitrator shall be an attorney knowledgeable in the area of healthcare law. Each Party shall bear its own costs and attorneys' fees. The arbitrator(s) shall have no authority to add to, subtract from, or modify any of the terms or provisions of this Agreement, but shall be limited solely to the interpretation and application of the specific provisions contained herein. The arbitrator shall not have the authority to award damages or other relief excluded by this Agreement, nor shall the arbitrator have the authority to award attorneys' fees to a Party.

12.12 Publicity and Press Release. Neither Party shall issue a Press Release or make any other public announcement regarding the relationship of the Parties as embodied in the Agreements or otherwise without written consent of the other Party. Ai may identify EAS Participant as an Ai customer in its customer lists or other marketing materials only with prior written approval from EAS Participant.

12.13 Entire Agreement. The Multi-Party Agreement, these Terms and Conditions, and the applicable Subscription Order(s) contain the entire understanding of the parties regarding the subject matter of this Agreement and supersede all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

**ATTACHMENT C – BUSINESS ASSOCIATE AGREEMENT**