

## TERMS OF SERVICE

## CONFIDENTIAL

These Terms of Service under the Client Service Agreement by and between PRN and Client are incorporated into the Client Service Agreement, as such Terms of Service may be amended from time to time.

## TERMS

**IMPORTANT – PLEASE READ**

Client hereby represents and warrants that for any patient that a Prescriber End User prescribes a prescription for the patient through the DoseSpot Platform, Client has obtained all necessary consents and permissions, and Client has informed the patient with all necessary information regarding the Prescription Discount Program and the DoseSpot Platform, as required by Applicable Law, for Client to enroll such patient in the Prescription Discount Program, including but not limited to:

- (i) authorization under HIPAA and other Applicable Law (a) for Client to share such patient's data including PHI, such as the patient's name, date of birth, contact information, prescriptions, and other necessary health information, with PRN and its third party service providers, including without limitation, RxLink (hereinafter "RxLink"), a PRN affiliate; and (b) for PRN and RxLink to use such data to provide the Prescription Drug Program; the authorization must reflect PRN and RxLink may receive remuneration as a result of the Prescription Drug Program; and
- (ii) consent for PRN and RxLink to contact the patient by SMS and MMS message for the Prescription Drug Program (subsections (i) and (ii) are collectively referred to as the "Prescription Discount Program Consents").

Client represents that (i) such patient has executed the Prescription Discount Program Consents, and that Client has explained to the patient, and the patient indicated they understand and have consented to PRN and RxLink use of such PHI for purposes of enrolling and administering the Prescription Discount Program; and (ii) the prescription for any medication was deemed medically necessary and not provided because of the Prescription Discount Program.

**For more information on the Prescription Discount Program, see Section 3.6, below.**

These Terms of Service under the Client Service Agreement by and between PRN and Client are incorporated into the Client Service Agreement, as such Terms of Service may be amended from time to time.

## TERMS

**1. Definitions.** Capitalized terms have the meanings ascribed to them in this Exhibit A, including the definitions set forth below, in the Exhibits to this Agreement, as they may be updated and supplemented from time to time, and elsewhere in this Agreement:

**"Agreement"** has the meaning set forth in the preamble of this Agreement.

**"Applicable Law"** means any and all applicable federal, state, and

local laws, common law, rules, regulations directives, guidelines, self-regulatory practices, reporting requirements, ordinances, orders, decrees, judgments, consent decrees, settlement agreements, and/or treaties (including but not limited to those related to privacy and data protection) in any applicable jurisdiction, including the Health Insurance Portability and Accountability Act and related regulations, as amended by the Health Information Technology for Economic and Clinical Health Act and related regulations (collectively, "**HIPAA**"), state privacy and security laws; the Telephone Consumer Protection Act and its implementing regulations and other federal and state laws that regulate communicating with individuals by text, SMS or MMS messages (collectively, "**TCPA**"); the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("**CAN-SPAM Act**"); the Anti-Kickback provisions of the Social Security Act and related regulations; and the federal Physician Self-Referral Prohibition provisions of the Social Security Act and related regulations.

**"Certification"** means DoseSpot Platform and Custom Portal, if applicable will be (a) tested by PRN for technical compatibility with the Surescripts health information exchange, (b) certified by Surescripts in such manner as Surescripts, in its sole discretion, determines, and (c) if controlled substances are to be prescribed, audited by an auditor chosen by PRN and approved by the U.S. Drug Enforcement Administration ("**DEA**").

**"Client"** has the meaning set forth in the preamble of this Agreement.

**"Client Communications"** means communications sent via the Services, including emails, SMS and MMS messages, communications through websites, transactions, and other similar communications.

**"Client Integration Services"** means the services necessary to integrate the DoseSpot Platform with the Client Solution.

**"Client Marketing Information"** means trademarks, trade names, service marks, slogans, logos, other source identifiers, marketing and promotional content, including but not limited to Client Communications and Client's marketing claims and other marketing information, provided or transmitted by Customer or its Authorized Users in connection with the Services.

**"Client Proprietary Content"** means information entered into the DoseSpot Platform by Client, which shall be limited to information necessary to facilitate prescription transmission and processing and shall exclude, without limitation, Client Marketing Information.

**"Client Solution"** means Client's current software.

**"Custom Portal"** means the web portal integration into the Client Solution by Client and the methods for transferring data between the DoseSpot Platform and Client Solution developed, used, or otherwise marketed by PRN; "Custom Portal" does not include text, graphics, interfaces, or business logic for e-prescribing that reside in the Client Solution and make calls to the DoseSpot Platform to fulfill e-prescribing services.

**"DoseSpot Platform"** or "**Platform**" has the meaning set forth in the preamble of this Agreement and Order Forms.

**"DoseSpot Technology"** has the meaning set forth in the preamble of this Agreement and Order Forms.

**"Initial Subscription Term"** has the meaning set forth in the preamble of this Agreement.

**"Integrations"** has the meaning set forth in the preamble of this Agreement.

**"Party"** and **"Parties"** has the meaning set forth in the preamble of this Agreement.

**"Prescriber End User"** means an individual, located in the United States or a United States territory, who: (i) is employed by, an active member of the medical staff of, or otherwise performs healthcare services as a legally authorized representative of either the Client or an entity with which Client has entered into a contractual arrangement; (ii) has been provided instruction by Client regarding the Client Solution and the applicable terms and conditions of this Agreement, including the consent and authorization requirements; and (iii) is properly and duly licensed, registered, or is otherwise authorized with the appropriate governmental authority to perform the applicable healthcare services, as required by Applicable Law. Notwithstanding the foregoing, Client may not provide Access to the DoseSpot Technology to any Technology Vendor.

**"PHI"** means (subject to the definition at 45 C.F.R. § 160.103) protected health information that PRN receives from Client or that PRN creates or receives on behalf of Client.

**"PRN"** has the meaning set forth in the preamble of this Agreement.

**"Renewal Subscription Term"** has the meaning set forth in the preamble of this Agreement.

**"Subscription Term"** has the meaning set forth in the preamble of this Agreement.

**"Surescripts"** has the meaning set forth in Section 3.7 below.

**"Surescripts Network"** has the meaning set forth in the preamble of this Agreement.

**"Surescripts Requirements"** shall be as set forth on Exhibit B.

**"Technology Vendor"** means an electronic health record or an electronic medical record vendor located in the United States or a United States territory that distributes the services provided to Client from PRN to health care providers located in the United States or a United States territory.

## 2. Description of Services

**2.1 Services Generally.** From time to time, the Parties may enter into one or more Order Forms pursuant to which Client (a) subscribes to specified DoseSpot Technology (each, a **"Subscription"**) for the Initial Subscription Term (renewing as set forth on the Cover Page); and/or (b) engages PRN to provide related implementation, integration, training, consulting, or other services (**"Professional Services"** or **"Services"**), in each case listing the fees (**"Fees"**) to be paid by Client to PRN for such Subscription and/or Services. Each Order Form will be consecutively numbered (Order Form No. 1, Order Form No. 2, etc.).

**2.2 Client Cooperation.** Client shall timely provide, at no cost to PRN, such materials, systems, facilities, data, information, assistance, access to personnel, and other cooperation as PRN reasonably requests (collectively, **"Cooperation"**). PRN shall be entitled to rely on the timeliness, sufficiency, and accuracy of such

Cooperation. Client acknowledges that such Cooperation may be essential to PRN's performance and agrees that PRN will not be liable for any performance delay or deficiency to the extent related to Client's delay or deficiency in providing Cooperation. Client acknowledges that such delays or deficiencies may require an adjustment to the schedule and/or fees previously agreed upon consistent with the scope and duration of the delay or deficiency.

**2.3 Compliance with Law.** Client shall comply with all Applicable Laws applicable to Client's use of the Services, including Client Communications and Client Marketing Information, which laws and regulations shall include but not be limited to: (a) any Applicable Laws that govern the sending of electronic marketing messages and the sending of SMS and/or MMS text messages (including, but not limited to the CAN-SPAM Act and TCPA, data privacy and protection, and intellectual property; (b) laws and regulations that apply to commerce, in each jurisdiction in which Client will be sending communications to a resident of the jurisdiction. **Client acknowledges and agrees that PRN is not responsible for obtaining any necessary consents, authorizations, or permissions from recipients of Client Communications.** Upon request, Client shall provide reasonable proof of compliance with the provisions set forth in this Section 2.3 and PRN shall have no obligation to provide Services where PRN reasonably believes that Client has not so complied.

**2.4 Subcontracting.** PRN may freely subcontract any obligation to perform all or part of any Services (or other services hereunder) or provide any Subscription or DoseSpot Technology.

**2.5 Platform, Technology, and Services.** PRN's provision of the DoseSpot Platform, DoseSpot Technology, and/or Services may include the use of data for the purpose of artificial intelligence, machine learning, augmented human intelligence development, algorithm development and improvement, and similar data aggregation activities to the fullest extent permitted by Applicable Laws. This involves creating algorithms that help the DoseSpot Platform, DoseSpot Technology, Services, and other systems to learn from the data and improve the DoseSpot Platform, DoseSpot Technology, Services and related services, and to improve the efficiency of PRN operations.

## 3. Platform Access

**3.1 Access Grant.** Subject to the terms and conditions of this Agreement (including the applicable Order Form), PRN hereby grants Client a limited, non-exclusive, non-transferable, non-sublicensable, fee-bearing right, during the applicable Subscription Term, to access and use the DoseSpot Technology specified in such Order Form (the **"Licensed Technology"**) through the Custom Portal. Such Licensed Technology may include PRN's (a) Platform; (b) Jumpstart Integration or Plus+ Integration (or other Integration as defined herein); and/or (c) other proprietary software modules and features. Without limitation, Client acknowledges that its access and use of the Licensed Technology is subject to its agreement and compliance with PRN's standard terms of service, privacy policy, acceptable use policy, and other agreements as may be provided or modified from time-to-time (**"End User Agreements"**).

The DoseSpot Platform is designed to enable prescription information to be entered for transmission to and processing by the Surescripts Network and/or FDB Vela Network. It includes (a) text, graphics, and data (excluding Client Proprietary Content and Client Marketing Information); (b) an interface and procedures for selecting, searching, using, interacting with and acting upon such text, graphics, and data; and (c) software, including scripts, whether intended to execute on one or more servers or installed on or downloaded to a client device, for implementing the foregoing.

**3.2 Restrictions.** Client will not provide access to the Licensed Technology to any person who is not an authorized employee, independent contractor of Client, or Prescriber End User (“**Authorized User**”). Client will be responsible and liable for all Authorized Users’ and Client’s non-Authorized Users’ compliance with the terms and conditions of this Agreement. Client’s use of any Licensed Technology is limited to the scope of the rights granted under Section 3.1 and as set forth in this Agreement, including the applicable Order Form. Client shall not otherwise use Licensed Technology in any way. The DoseSpot Technology, including the Licensed Technology, constitutes proprietary information and valuable trade secrets of PRN. Without limiting the generality of the foregoing, Client shall not, and shall not permit or suffer any third party to: (a) use any DoseSpot Technology other than the Licensed Technology; (b) use the Licensed Technology for any purpose other than sending prescriptions as expressly permitted by and in accordance with this Agreement, including the applicable Order Form; (c) modify, adapt, alter, translate, or create derivative works of or based on any DoseSpot Technology or any accompanying materials; (d) sublicense (except to the extent expressly permitted in the applicable Order Form), distribute, sell, use for service bureau or timesharing purposes, lease, rent, loan, or otherwise transfer or make available the Licensed Technology to any third party; (e) reverse engineer, decompile, disassemble, decode, adapt, or otherwise attempt to derive the source code or the underlying design, functionality, or structure of any DoseSpot Technology; (f) otherwise use, reproduce, display, or copy any software or code that is DoseSpot Technology; (g) use DoseSpot Technology to store or process any PHI without PRN’s prior written consent; (h) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm any other PRN client’s or user’s access to or use of DoseSpot Technology; (i) display, modify, reproduce or distribute any images, or portion(s) thereof, included with, visible upon access to, or relating to the Licensed Technology, including the Platform and the Custom Portal; (j) access or use any DoseSpot Technology outside of the United States; or (k) access or use any DoseSpot Technology in violation of any Applicable Laws.

**3.3 Monitoring.** Subject to Applicable Law, PRN may but is not obligated to (a) monitor Client prescribing patterns, including any seemingly excessive prescriptions for controlled substances, and may voluntarily report anomalies to relevant federal and state authorities, provided PRN (i) notifies Client of the perceived anomaly; and (ii) makes any such voluntary reporting in good faith; and (b) monitor, collect, and share with Client usage data regarding the Licensed Technology and compile statistical and performance information related to the operation and access to the Licensed Technology for the internal use of Client and PRN and other lawful purposes. Without limiting the generality of the foregoing, PRN may (x) verify that use of the Licensed Technology is within the parameters specified in this Agreement, (y) track and assess fees and other amounts payable hereunder, and (z) analyze performance. If such monitoring reveals that the Licensed Technology is being used contrary to the terms and conditions of this Agreement, Client shall promptly pay PRN additional fees consistent with actual use of the Licensed Technology, which assessment of additional fees shall be without prejudice to any other legal or equitable remedies PRN may have.

**3.4 No Other Rights.** PRN grants and Client obtains only the rights granted under this Agreement, including the applicable Order Form. Any rights not expressly granted to Client hereunder are expressly reserved to PRN.

**3.5 Prescription Fulfillment.** PRN shall have no responsibility

for confirming the processing of a prescription by the pharmacy to which Client directed the script for transmission. As between the Parties, any such responsibility related to fulfillment of a prescription belongs solely to Client.

### **3.6 Prescription Discount Programs.**

a. PRN or and RxLink may offer as part of the Services through the DoseSpot Platform one or more prescription discount programs, which offers prescription information, discounts and coupons, referrals to Client’s patients, who have provided Client with consent to participate in the Prescription Discount Program (defined below), for certain drugs that Prescriber End Users prescribe to such patients and provides assistance with affordability of prescription drugs, and prescription pricing information (“Prescription Discount Programs”). The Prescription Discount Program is not intended as a substitute for health insurance and the range of the discounts will vary depending on the prescription drug and the participating pharmacy. Discounts are not guaranteed, if any, but are exclusively available only at participating pharmacies and may vary depending on brand or generic selection and by pharmacy provider. Client acknowledges and understand that PRN and RxLink may receive remuneration from third parties, including but not limited to drug manufacturers, as a result of Client’s patients using Prescription Discount Programs.

b. Client hereby represents and warrants that for any patient that a Prescriber End User prescribes a prescription for the patient through the DoseSpot Platform, Client has obtained all necessary consents and permissions, and Client has informed the patient with all necessary information regarding the Prescription Discount Program and the DoseSpot Platform, as required by Applicable Law, for Client to enroll such patient in the Prescription Discount Program, including but not limited to: (i) authorization under HIPAA and other Applicable Law (a) for Client to share such patient’s data including PHI, such as the patient’s name, date of birth, contact information, prescriptions, and other necessary health information, with PRN and RxLink; and (b) for PRN and RxLink to use such data to provide the Prescription Drug Program; the authorization must reflect PRN and RxLink may receive remuneration as a result of the Prescription Drug Program; and (ii) consent for PRN and RxLink to contact the patient by SMS and MMS message for the Prescription Drug Program (subsections (i) and (ii) are collectively referred to as the “Prescription Discount Program Consents”). Client represents that (i) such patient has executed the Prescription Discount Program Consents, and that Client has explained to the patient, and the patient indicated they understand and have consented to PRN and RxLink use of such PHI for purposes of enrolling and administering the Prescription Discount Program; and (ii) the prescription for any medication was deemed medically necessary and not provided because of the Prescription Discount Program.

c. The Prescription Discount Program is offered as “AS IS” and “AS AVAILABLE” basis and will not be provided where prohibited by Applicable Law. The Prescription Discount Program is provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement, or course of performance.

d. Client acknowledges and agrees that (i) PRN nor any of its third-party service providers administering any Prescription Discount Program does not make any payment directly to Client to provide its patients with prescriptions for certain drugs; and (ii) the Prescription Discount Program provides cost savings information only and is not intended as medical advice or a substitute for competent medical care. PRN or any of its third-party service providers do not evaluate Client’s determination to provide any prescription medication. It is Client’s sole responsibility to discuss all medications and investigate any adverse side effects,



complications or allergic reactions with its patients. The Prescription Discount Program does not endorse any specific prescription medication, healthcare provider, medical service, or treatment.

e. Upon request, Client shall provide reasonable proof of compliance with the provisions set forth in this Section 3.6 (Prescription Discount Program) and PRN shall have no obligation to provide Services where PRN reasonably believes that Client has not so complied. Further, in addition to the audit right at Section 14.6 (Audit), below, PRN shall have the right to audit and monitor all applicable procedures and records of Client to determine Client's compliance with the requirements related to obtaining Prescription Discount Program Consents. Client shall promptly remedy any violation of any term of this Section 3.6 (Prescription Discount Program) and shall certify the same to PRN in writing. The fact that PRN has the right to audit, or fails to audit Client's procedures and records, does not relieve Client of its responsibility to comply with these Terms of Service, regardless of whether PRN detects or fails to detect a violation by Client, nor does it constitute PRN's acceptance of such practices or waiver of PRN's rights under these Terms of Service.

**3.7 PRN Responsibilities.** PRN shall develop and maintain software for implementing the DoseSpot Platform. PRN shall have no obligation to make upgrades or to make improvements to DoseSpot Technology, including the Licensed Technology, or to make upgrades or improvements available to Client, except to use commercially reasonable efforts as may be necessary to keep the Platform functioning during the then-current Term consistent with the standards in this Agreement; provided doing so is within PRN's control and subject to the terms and conditions of this Agreement. Any upgrades or improvements that are made available to Client may be licensed under the terms of this Agreement and may have additional associated Fees as set forth in an Order Form or amendment thereto. PRN agrees to the Service Level Agreement as set forth on Exhibit D.

### **3.8 Surescripts.**

(a) Certification. Client acknowledges that using the Platform and Custom Portal to send prescriptions via the Surescripts Network is dependent upon Client's receipt of certification from Surescripts, LLC ("**Surescripts**") or its designee. Certification criteria are determined in the sole discretion of Surescripts and may change at any time without notice to Client or PRN.

(b) Flow-down Obligations. Client and its Prescriber End Users will access and utilize the Surescripts Network only in accordance with the terms and conditions of this Agreement, including the provisions set forth in the Surescripts Requirements set forth on Exhibit B that Surescripts requires PRN to flow-down to Client and/or Prescriber End Users or otherwise facilitate PRN's compliance with its obligations to Surescripts. Client acknowledges that the agreement between Surescripts and PRN requires that Client and its Prescriber End Users agree to the Surescripts agreement terms and conditions included herein as a condition to access and utilize the Surescripts Network and maintain its Surescripts certification. Client agrees to comply, and to cause its Prescriber End Users to comply, with the Surescripts Requirements as set forth on Exhibit B, notwithstanding any other provision of this Agreement.

(c) End Date. PRN shall provide to Client notice within a commercially reasonable time in advance of the effective date of any expiration or termination of its agreement with Surescripts and that the Surescripts Network and services will no longer be available to Client or its Prescriber End Users as of that effective date.

## **4. Professional Services**

**4.1 PRN Obligations.** PRN will use commercially reasonable efforts to (a) perform and complete the Services in accordance with this Agreement, including the applicable Order Form, and (b) provide suitably trained and skilled personnel to perform the Services.

**4.2 Client License to PRN to Perform Services.** Client hereby grants to PRN a non-exclusive, worldwide, royalty-free, fully paid-up license to intellectual property owned or to which Client has rights as necessary or useful for PRN to perform the Services.

## **5. Payments**

**5.1 Fees.** Client will pay PRN the Fees set forth in the applicable Order Form pursuant to this Agreement, including:

- (a) User Fees for access and use of the Licensed Technology, which shall be due monthly in advance (with the first such fee due upon execution of this Agreement unless otherwise agreed);
- (b) Service Fees for Services (e.g., Client Integration Services), which shall be payable when billed;
- (c) Certification Fee for DEA certification or recertification (if applicable), which shall be payable when billed; and
- (d) Other Fees as set forth in the applicable Order Form.

Client acknowledges and agrees that it shall be solely responsible for and must manage activation and deactivation of Prescriber End Users. To the extent applicable, User Fees will automatically adjust pursuant to the calculation set forth in the governing Order Form.

The Parties acknowledge and agree that all Fees shall be consistent with the fair market value of access to and use of the Licensed Technology and the Services provided to Client, none of which shall be reimbursed from any other source, and shall not take into account the volume or value of business generated between the Parties.

**5.2 Invoicing.** PRN shall invoice Client monthly and Client shall make payment net fifteen (15) days of the invoice date. Payments due under this Agreement shall be made electronically or sent to its notice address (or such other address for payment it designates by written notice). PRN shall provide Client a payment authorization form that Client will promptly complete and return.

**5.3 Late Payments.** Any amount not paid when due shall be subject to a late charge of one and one-half percent (1½%) per month of the amount due, or if less the maximum amount allowable by law, and shall accrue until paid in full. Such remedy shall not limit any of PRN's remedies and shall be in addition to all other remedies available at law or in equity.

**5.4 Suspended or Terminated Access.** Without limitation, PRN may, at its sole discretion, suspend or terminate the ability of any Prescriber End Users to access or use the Licensed Technology, or any portion thereof (a) for so long as Client has not paid any past due amount in full, provided, however, that PRN gives Client at least ten (10) days notice of its intention to do so; or (b) to the extent PRN reasonably and in good faith believes access or use by such Prescriber End User has or would violate any Surescripts Requirements. Client hereby indemnifies, defends, and holds PRN harmless from any and all losses, damages, and liabilities of any kind (including attorneys' fees) resulting from or related to (x) Client's failure to pay amounts when due, (y) Client's breach or anticipated breach of any Surescripts

Requirements, or (z) PRN's suspension or termination of Prescriber End Users' access to or use of Licensed Technology.

**5.5 Taxes.** All amounts payable by Client to PRN are exclusive of any sales, use, and other taxes or duties, however designated, including withholding, royalties, know-how payments, customs, privilege, excise, sales, use, value-added, and property taxes (collectively, "**Taxes**"). Client will be solely responsible for payment of any Taxes, except for those based on PRN's income. Client will not withhold any Taxes from any amounts due to PRN.

**5.6 Pricing.** All Fees that apply during any Renewal Subscription Term shall increase by three percentage points (3%) from the Fees payable during the prior Subscription Term or Renewal Subscription Term, as applicable. PRN will notify Client at least forty-five (45) days prior to the end of the then current Subscription Term or Renewal Subscription Term of any increase in the Fees that are greater than a five percentage point (5%) increase in such Fees from the prior Subscription Term or Renewal Subscription Term. All such increases in Fees shall automatically take effect on commencement of the Renewal Subscription Term unless Client elects to terminate the applicable Order Form or this Agreement as set forth in Section 12.2.

**6. Representations and Warranties of Client.** Client hereby represents, warrants, and covenants under penalty of perjury and fraud that:

**6.1 No Conflicts.** Client is not under any pre-existing obligation inconsistent with the provisions of this Agreement and shall not enter into any such obligation and, without limiting the generality of the foregoing, it is not a party to any agreement or other arrangement with Surescripts.

**6.2 Compliance with Laws.** (a) Client shall perform under this Agreement and use the Licensed Technology only in compliance with Applicable Law, including laws, rules, and regulations relating to controlled substances, licensure, and the issuance by valid prescriptions, and shall ensure that it and all Prescriber End Users have all required licenses, authorizations and approvals; and (b) without limiting the generality of the foregoing, (i) every Prescriber End User that uses or will use the Licensed Technology has or will have, prior to such use, represented to Client that such Prescriber End User possesses the requisite licensure or authority to enter a prescription in or otherwise use the Licensed Technology, and Client shall activate or deactivate such users accordingly; (ii) every Prescriber End User has or will have, prior to use of any patient information, represented to Client that such Prescriber End User has or will have obtained all patient consents and/or authorizations required by Applicable Law, including without limitation the Prescription Discount Program Consents; (iii) all prescriptions entered in the Platform are the result of a valid clinical judgment of the responsible Prescriber End User based upon an evaluation of the patient in accordance with Applicable Law; and (iv) the marketing and compensation practices of Client comply with Applicable Law, including, to the extent applicable, those enforced by the U.S. Food and Drug Administration and the U.S. Department of Health and Human Services Office of Inspector General.

**6.3 Testing Environments.** Client shall not enter PHI in testing software environments of the Licensed Technology.

**6.4 Rights.** Client has the right and unrestricted ability to assign the intellectual property to PRN as set forth in Section 10, and such intellectual property does not infringe upon any copyright, trade secret, trademark (including service marks), trade dress, patent,

invention, know-how, methodology, industrial design right, right of publicity or privacy, or any other intellectual property or proprietary right of any person, including any application for registration of any of the foregoing, whether contractual, statutory or at common law and whether registered or unregistered.

**6.5 Conduct.** Client shall not act in any manner that may detrimentally affect the operations, prospects, or reputation of PRN or any of its customers. Client has a legally sufficient privacy policy that is made available to patients prior to its provision of any patient data to PRN that fully and accurately describes Client's sharing of the patient's data with PRN and RxLink use of that data, including for the Prescription Discount Program. Client represents that PRN's use of any patient data: (a) will not infringe, misappropriate, or otherwise violate the intellectual property rights or other rights of any third party; (b) will not constitute defamation, invasion of privacy or publicity, or otherwise violate any similar rights of any third party; and (c) will not be used in any activity in violation of the law or to promote such activities, including, without limitation, in a manner that might be illegal or harmful to any person or entity. Client will not distribute, share, or facilitate the distribution of unauthorized data, malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code.

**6.6 Nondisparagement.** Neither Client nor any Prescriber End Users shall disparage, or make any negative statements about, PRN or any of PRN's officers, managers, members, employees, customers, investors, agents, advisors or other consultants, in any manner likely to be harmful to PRN or its business or business reputation; *provided* that Client may respond accurately and fully to any question, inquiry, or request for information when legally required.

**6.7 Insurance.** With respect to all acts and omissions related to this Agreement by either Party, each Party shall have and maintain the following insurance coverages.

(a) Commercial General Liability Insurance with minimum limits of \$1 million per occurrence and \$2 million annual policy aggregate, including coverage for premises liability, completed operations, contractual liability, bodily injury (including death), and property damage, covering all of Client's activities related to this Agreement;

(b) Workers' Compensation as required by Applicable Law;

(c) Employer's Liability Insurance with minimum limits of (i) \$1 million per occurrence covering bodily injury by accident, (ii) \$1 million per employee covering bodily injury by disease, and (iii) \$2 million annual policy aggregate;

(d) Professional Liability (E&O) Insurance covering all activities of Client and its Prescriber End Users related to this Agreement, with minimum limits of \$1 million per occurrence and \$2 million annual policy aggregate; and

(e) Cyber Liability Insurance covering all activities of Client and its Prescriber End Users related to this Agreement, with minimum limits of \$1 million per occurrence and \$2 million annual policy aggregate.

If, in any of the foregoing cases, Client has procured a claims-made based policy (or policies) and it (or they) are cancelled or not renewed, Client agrees to exercise any option in such policy (or policies) to extend the reporting period to the maximum period permitted; *provided, however*, that Client need not exercise such option if the superseding insurer will accept all prior claims. Each of Client's insurance policies shall (i) be issued by companies that have an A.M. Best rating of not less than "A-", and are in a size

category which is not lower than "VIII"; (ii) be primary and noncontributory with any of PRN's insurance; (iii) add PRN as an additional insured (except for those policies maintained pursuant to paragraphs (c) and (e) of this Section); (iv) be maintained during the Term and for a period of not less than three (3) years thereafter; and (v) not be cancelled or non-renewed except upon at least sixty (60) days prior written notice to PRN. Upon request, Client shall provide to PRN certificates evidencing all insurance and endorsements required by this Section. Nothing in this Section shall be construed as limiting in any manner Client's obligations or liability to PRN under this Agreement.

**6.8 Flow-down Obligations.** Client will flow-down to all Authorized Users its obligations under this Agreement, including the provisions set forth in the Exhibits to this Agreement, including this Exhibit A. Client agrees to comply, and to cause its Authorized Users to comply, with the requirements as set forth in this Agreement and the Exhibits to this Agreement, including this Exhibit A, notwithstanding any other provision of this Agreement.

**6.9 Security Obligations.** Client agrees to utilize security controls provided by PRN to maintain secure communications and secure data transfers for the term of this Agreement. Security controls include MFA (Multi Factor Authentication) and SFTP (Secure File Transfer Protocol). Client also agrees to notify PRN Security at [itsecurity@dosespot.com](mailto:itsecurity@dosespot.com) of any security breach or credential compromise within 24 hours.

## **7. Representations and Warranties of PRN.**

**7.1 General.** PRN hereby represents, warrants, and covenants that:

(a) General Representation. PRN will (i) use commercially reasonable efforts consistent with prevailing industry standards to perform and maintain the DoseSpot Platform in a manner that minimizes errors and interruptions in the DoseSpot Platform, and (ii) perform its Services to Client in a professional and workmanlike manner.

(b) Access to Client Materials. PRN hereby represents, warrants, and covenants that PRN shall not access any Client Proprietary Content or Client Marketing Information in a manner or for any purpose other than that authorized by this Agreement.

(c) Compliance with Applicable Law. PRN's web hosting and production services and privacy practices related to the DoseSpot Platform shall be operated in accordance with Applicable Law.

(d) Anti-Virus. PRN maintains industry standard methods, including current anti-virus software, to defend against viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

(e) Security Assessment and Provision of Audited Security Controls. Promptly after written (including email) request from Client, PRN shall provide Client with: (i) its most recent SOC II, Type 1 report; and (ii) provide its completed Standardized Information Gathering (SIG) questionnaire (or similar document) (the "Security Documentation"). Any information or documentation provided pursuant to this assessment process or otherwise pursuant to this Section shall be considered PRN's Confidential Information and subject to Section 9 of this Agreement.

**7.2 Additional Representations and Warranties.** PRN represents and warrants, and Client agrees, that (a) it may access, monitor, and/or review Client's activity and data in the cloud-based instance of the DoseSpot Platform; (b) its Professional Services do not in any way provide or include medical advice and that any clinicians using the DoseSpot Platform must use their independent professional medical judgment in determining the appropriate care and treatment for patients; and (c) no joint venture, physician-patient, or any other relationship between the Parties is created by using the DoseSpot Platform.

**7.3 Nonconformity.** The DoseSpot Platform and/or PRN may have defects or deficiencies that may not be corrected by PRN and are subject to change in PRN's sole discretion. In the event Client provides PRN written notice of a material nonconformity of any of PRN's foregoing warranties, PRN will use all reasonable efforts to promptly remedy such nonconformity at no additional charge to Client. The foregoing states PRN's entire liability and Client's sole and exclusive remedy for breach of any warranty of PRN.

**7.4 SPECIAL DISCLAIMER; NO MEDICAL ADVICE.** THE SERVICES (INCLUDING ANY PRESCRIPTION DISCOUNT PROGRAM) MAY CONTAIN INFORMATION RELATING TO THE HEALTH AND OTHER INFORMATION RELATED TO E-PRESCRIBING AND PRESCRIPTIONS OR PRESCRIPTION DISCOUNT PROGRAMS. THE DOSESPOT PLATFORM, DOSESPOT TECHNOLOGY, AND SERVICES MAY INCLUDE AND RELY UPON THE USE OF ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING AND PRN DOES NOT WARRANT ANY DATA GENERATED THROUGH THE DOSESPOT PLATFORM, DOSESPOT TECHNOLOGY, OR SERVICES WILL BE ACCURATE OR COMPLETE. CLIENT IS RESPONSIBLE FOR ENSURING HUMAN REVIEW OF ALL GENERATED DATA AND FOR ALL MEDICAL ADVICE AND HEALTH CARE SERVICES. THIS IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT MEANT TO BE A SUBSTITUTE FOR THE ADVICE PROVIDED BY MENTAL HEALTH PROFESSIONALS, PSYCHIATRIST OR OTHER HEALTH CARE PROFESSIONS. CLIENT SHOULD NOT USE THE INFORMATION CONTAINED IN THE SERVICES (INCLUDING ANY PRESCRIPTION DISCOUNT PROGRAM) FOR DIAGNOSING A MENTAL OR PHYSICAL HEALTH OR FITNESS PROBLEMS OR DISEASE OR AS RECOMMENDING THE PRESCRIBING OF ANY DRUG OR MEDICAL DEVICE TO TREAT ANY MENTAL OR PHYSICAL HEALTH OR FITNESS PROBLEM OR DISEASES. CLIENT ACKNOWLEDGES AND AGREES THAT THIS SERVICES ARE NOT INTENDED TO CONSTITUTE, AND DO NOT CONSTITUTE, THE PRACTICE OR FURNISHING OF MEDICAL OR PROFESSIONAL HEALTH CARE ADVICE. CLIENT IS SOLELY RESPONSIBLE FOR PROVIDING FEEDBACK, AND DISCUSSING OR RECOMMENDING ANY TREATMENT OPTIONS. PRN, ITS AFFILIATES, ITS LICENSORS, ITS SERVICE PROVIDERS AND THIRD-PARTY PROVIDERS DO NOT RECOMMEND OR ENDORSE ANY SPECIFIC TESTS, PRODUCTS, PROCEDURES, DRUGS, MEDICAL DEVICES OR OPINIONS. CLIENT ASSUMES ALL RESPONSIBILITIES AND OBLIGATIONS WITH RESPECT TO ANY DECISIONS MADE WITH RESPECT TO THE PRESCRIBING OF MEDICAL DEVICE, DRUG, MEDICATION OR RELATED PRODUCTS.

**7.5 Primary Disclaimer.** THE DOSESPOT TECHNOLOGY AND ALL SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND PRN (INCLUDING ITS LICENSORS) DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT THERETO, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. PRN DOES NOT WARRANT THAT THE DOSESPOT PLATFORM OR THE CONTENT OR INFORMATION MADE AVAILABLE THEREON WILL BE SECURE, UNINTERRUPTED OR ERROR



FREE; NOR DOES PRN MAKE ANY WARRANTY THAT THE DOSESPOT PLATFORM OR SUCH CONTENT WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, INCLUDING THOSE OF CLIENT'S PRESCRIBER END USERS OR OTHER CUSTOMERS, ACHIEVE ANY PARTICULAR RESULT, BE COMPATIBLE WITH OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. PRN MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. ALL THIRD-PARTY SERVICES ARE ALSO PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND SUBJECT TO ANY APPLICABLE THIRD-PARTY SERVICE PROVIDER TERMS AND CONDITIONS. ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY SERVICES IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY SERVICE PROVIDER.

**7.6 Additional Disclaimers.** Without limiting the generality of Section 7.4, the following additional disclaimers apply:

(a) IN RESPECT OF USE OF THE E-PRESCRIBING FUNCTIONALITY OF THE DOSESPOT PLATFORM, INCLUDING CLIENT'S UNDERLYING USE OF THE NETWORK OF PRN'S PRESCRIPTION CREDENTIALING THIRD- PARTY PROVIDER, NEITHER PRN NOR ANY THIRD-PARTY PROVIDERS MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY THROUGH SUCH NETWORK OF ANY PARTICULAR DATA SOURCE OR OTHER PARTICIPANT IN SUCH NETWORK, AND ALL DATA SOURCES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. AT ANY TIME, DATA SOURCES OR OTHER PARTICIPANTS IN SUCH NETWORK MAY BE ADDED TO OR DELETED FROM SUCH NETWORK OR MAY LIMIT ACCESS TO THEIR DATA OR ELECT NOT TO RECEIVE PRESCRIPTIONS OR OTHER MESSAGES FROM CLIENT AND/OR CLIENT'S AUTHORIZED USERS, AND SUCH CHANGES MAY OCCUR WITHOUT PRIOR NOTICE TO PRN OR CLIENT.

(b) PRN'S PRESCRIPTION CREDENTIALING THIRD-PARTY PROVIDER USES AVAILABLE TECHNOLOGY TO MATCH PATIENT IDENTITIES TO PROVIDE ITS SERVICES, HOWEVER, BECAUSE PATIENT INFORMATION IS MAINTAINED IN MULTIPLE PLACES, NOT ALL OF WHICH ARE ACCESSIBLE TO SURESCRIPTS, AND BECAUSE NOT ALL PATIENT INFORMATION IS KEPT IN A STANDARD FASHION OR IS REGULARLY UPDATED, IT IS POSSIBLE THAT FALSE MATCHES MAY OCCUR OR THAT THERE MAY BE ERRORS OR OMISSIONS IN THE PRESCRIPTION BENEFIT AND/OR MEDICATION HISTORY INFORMATION PROVIDED PURSUANT TO ITS SERVICES. THEREFORE, IT IS THE RESPONSIBILITY OF ANY TREATING PHYSICIAN OR OTHER HEALTH CARE PROVIDER OR FACILITY (AND NOT THE RESPONSIBILITY OF PRN OR PRN'S THIRD-PARTY PROVIDERS, INCLUDING SURESCRIPTS) TO VERIFY PRESCRIPTION BENEFIT OR MEDICATION HISTORY INFORMATION THROUGH OTHER MEANS WITH EACH PATIENT (OR THE PATIENT'S REPRESENTATIVES, AS APPLICABLE) BEFORE SUCH INFORMATION IS RELIED UPON OR UTILIZED IN DIAGNOSING OR TREATING THE PATIENT. NEITHER PRN NOR PRN'S THIRD-PARTY PROVIDERS, INCLUDING SURESCRIPTS, ARE A HEALTH PLAN, HEALTH CARE PROVIDER NOR PRESCRIBER.

NEITHER PRN, SURESCRIPTS, NOR PRN'S THIRD-PARTY PROVIDERS, INCLUDING SURESCRIPTS, INDEPENDENTLY VERIFY OR REVIEW, AND CANNOT INDEPENDENTLY VERIFY OR REVIEW, THE INFORMATION TRANSMITTED THROUGH ANY NETWORK UNDERLYING THE PLATFORM FOR ACCURACY OR COMPLETENESS. PURSUANT TO THE FOREGOING, CLIENT ACKNOWLEDGES, AND SHALL CAUSE ITS PRESCRIBER END USERS TO ACKNOWLEDGE IN WRITING, THAT THE PRESCRIPTION BENEFIT AND MEDICATION HISTORY INFORMATION PROVIDED VIA SUCH SERVICES IS NOT COMPLETE OR ACCURATE, AND THAT NEITHER PRN NOR PRN'S THIRD-PARTY PROVIDERS, INCLUDING SURESCRIPTS (AND INCLUDING THEIR DATA SOURCES), PROVIDES ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE PRESCRIPTION BENEFIT OR MEDICATION HISTORY INFORMATION, AND CLIENT HEREBY RELEASES AND HOLDS HARMLESS, AND BY CONTRACT SHALL CAUSE ITS PRESCRIBER END USERS TO RELEASE AND HOLD HARMLESS, PRN AND EACH OF PRN'S THIRD-PARTY PROVIDERS, INCLUDING SURESCRIPTS (AND INCLUDING ANY PERSON OR ENTITY PROVIDING PRESCRIPTION BENEFIT OR MEDICATION HISTORY INFORMATION TO US OR PRN'S THIRD-PARTY PROVIDERS), FROM ANY LIABILITY, CAUSE OF ACTION, OR CLAIM RELATED TO THE COMPLETENESS OR LACK THEREOF OF THE PRESCRIPTION BENEFIT OR MEDICATION HISTORY INFORMATION. IN ADDITION, CLIENT ACKNOWLEDGES AND AGREES, AND SHALL BY CONTRACT REQUIRE ITS PRESCRIBER END USERS TO ACKNOWLEDGE AND AGREE, THAT IT IS SOLELY RESPONSIBLE, AND THAT CLIENT, AND ITS PRESCRIBER END USERS, MUST, AS A CONDITION TO USING THE PLATFORM, CONFIRM THE ACCURACY OF THE PRESCRIPTION BENEFIT AND MEDICATION HISTORY INFORMATION WITH CLIENT'S PRESCRIBER END USER'S PATIENT PRIOR TO PROVIDING ANY MEDICAL SERVICES BASED THEREON, AND THAT CLIENT OR ITS PRESCRIBER END USER, AS APPLICABLE, MUST USE HIS/HER/ITS PROFESSIONAL JUDGMENT IN THE PROVISION OF CARE. CLIENT AGREES THAT PRN'S THIRD-PARTY PROVIDERS, INCLUDING SURESCRIPTS (AND THEIR DATA SOURCES), ARE THIRD-PARTY BENEFICIARIES TO THIS SECTION.

(c) ANY NETWORK UNDERLYING THE PLATFORM IS NOT INTENDED TO SERVE AS A REPLACEMENT FOR: (I) A WRITTEN PRESCRIPTION WHERE NOT APPROVED AS SUCH BY THE APPROPRIATE GOVERNMENTAL AUTHORITIES OR WHERE SUCH WRITTEN PRESCRIPTION IS REQUIRED FOR RECORD KEEPING PURPOSES; OR (II) APPLICABLE PRESCRIPTION DOCUMENTATION. USE OF SUCH NETWORK IS NOT A SUBSTITUTE FOR A HEALTH CARE PROVIDER'S STANDARD PRACTICE OR PROFESSIONAL JUDGMENT. ANY DECISION WITH REGARD TO THE APPROPRIATENESS OF TREATMENT, OR THE VALIDITY OR RELIABILITY OF INFORMATION, IS THE SOLE RESPONSIBILITY OF A PATIENT'S HEALTH CARE PROVIDER.

## **8. Relationship of the Parties**

**8.1 Independence.** Client is an independent party and is not an agent, independent contractor, or employee of, and has no authority to bind, PRN by contract or otherwise. Nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture, or employer-employee relationship between PRN and Client.

**8.2 Noninterference with Business.** During the Term and for two (2) years thereafter, Client agrees not to interfere with the

business of PRN in any manner. By way of example and not of limitation, Client agrees not to work on a project that will or has the potential to compete with PRN's Platform services.

## 9. Confidential Information

**9.1 Definition.** As used in this Agreement, "**Confidential Information**" means any and all technical and non-technical information of a Party (the "**Disclosing Party**") to this Agreement (including patents, copyrights and works of authorship, trademarks (including service marks), trade secrets, trade dress, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, methodologies, industrial design rights, processes, apparatus, equipment, algorithms, software programs, and software source documents), whether registered or unregistered, and including any application for registration of any of the foregoing, related to the current, future and proposed business, products and services of such Party, and its suppliers and customers, and includes information concerning development, design details and specifications, engineering, customer lists, business forecasts, sales, and marketing plans and any other similar information or data which is disclosed to the other party (the "**Recipient**") or to which the Recipient otherwise gains access as a result of performing under this Agreement. "Confidential Information" also includes proprietary or confidential information of any third-party that may disclose such information to the Disclosing Party in the course of the Disclosing Party's business, including Surescripts materials and third-party data made available through the Surescripts Network, and all other information that Client knew, or reasonably should have known, was the Confidential Information of PRN or a third party (in each case, whether labeled "Confidential" or not). Confidential Information does not include information that: (i) is in the Recipient's possession at the time of disclosure as shown by the Recipient's files and records immediately prior to the time of disclosure; (ii) before or after it has been disclosed to the Recipient, enters the public domain, not as a result of any action or inaction of the Recipient; (iii) is approved for release by written authorization of the Disclosing Party; (iv) is disclosed to the Recipient by a third party not in violation of any obligation of confidentiality; or (v) is independently developed by the Recipient without reference to the Disclosing Party's Confidential Information.

**9.2 Nondisclosure and Nonuse.** The Recipient agrees not to use the Confidential Information of the Disclosing Party for any purpose except as expressly permitted under this Agreement. The Recipient agrees not to copy, alter, modify, disassemble, reverse engineer or decompile any of the materials comprising Confidential Information, unless permitted in writing by the Disclosing Party, agrees to establish and maintain appropriate safeguards against the destruction, loss or alteration of Confidential Information, and otherwise agrees to safeguard Confidential Information in a manner no less rigorous than it protects its own information of a similar nature, but no less than reasonable safeguards. The Recipient agrees not to disclose the Confidential Information to any third parties or to any of its employees, contractors or agents except those who have a need to know the Disclosing Party's Confidential Information to enable the Recipient to fulfill its obligations under this Agreement; *provided*, that such parties shall be made aware that such Confidential Information is confidential to the Disclosing Party and shall be under a written contractual restriction on non-disclosure and proper treatment of Confidential Information that is consistent with and no less rigorous than the terms of this Section. Notwithstanding the foregoing, the Recipient may disclose the Disclosing Party's Confidential Information to the extent required by a valid order of a court or other governmental

body or by Applicable Law and to its attorneys, financial advisers, lawyers or accountants ("**Representatives**"); *provided, however*, that the Recipient will use all reasonable efforts to notify the Disclosing Party of the obligation to make such disclosure in advance so that the Disclosing Party will have a reasonable opportunity to object to such disclosure. The Recipient agrees that it shall treat the Confidential Information with the same degree of care as it accords its own Confidential Information of a similar nature; provided that in no event shall the Recipient exercise less than reasonable care to protect the Disclosing Party's Confidential Information. The Recipient agrees to advise the Disclosing Party in writing of any misappropriation or misuse by any person of the Disclosing Party's Confidential Information of which the Recipient may become aware. The Recipient will not communicate any information to the Disclosing Party in violation of the proprietary rights of any third party.

**9.3 Return or Destroy.** Except as required by law or the Surescripts Requirements, any Confidential Information furnished to the Recipient, and all copies thereof, at the earlier of the Disclosing Party's request, or the termination of the business relationship between the Disclosing Party and the Recipient, at the Disclosing Party's option, will either be: (a) promptly returned to the Disclosing Party; or (b) destroyed by the Recipient (with the Recipient providing written certification of such destruction to the Disclosing Party) *provided, however*, that neither Recipient nor any of its Representatives shall be required to destroy any electronic copy of any Confidential Information that is created pursuant to its standard electronic backup and archival procedures if (i) personnel whose functions are not primarily information technology in nature do not have access to such retained copies, and (ii) personnel whose functions are primarily information technology in nature have access to such copies only as reasonably necessary for the performance of their information technology duties (e.g., for purposes of system recovery); *provided, further, however*, that Recipient and its Representatives shall continue to be bound by the terms and conditions of this Agreement with respect to any such retained Confidential Information.

**9.4 Surescripts Information.** Client and its Prescriber End Users shall keep confidential with no less than a reasonable degree of care any proprietary and/or confidential information of Surescripts or its participants to which it has access.

**9.5 No Solicitation.** In order to enhance the confidentiality and non-use provisions of this Agreement and to protect each Party's intellectual property, during the Term and for six (6) months after its expiration or termination neither Client nor any of its Representatives shall solicit or attempt to solicit, directly or indirectly, any employee, advisor, contractor, or consultant of PRN to terminate his, her, or its relationship with PRN in order to become an employee, advisor, contractor, or consultant of or to any other person or entity; provided that a general advertisement shall in no event be deemed to be a breach of this Section.

**9.6 Other Rights.** Client agrees and understands that this Section 9 (Confidential Information) supplements, and does not supersede, any rights PRN may have in law or equity with respect to protecting trade secrets or other confidential or proprietary information.

## 10. Intellectual Property

### 10.1 Background IP.

(a) Client Background IP. Except as otherwise provided herein, Client hereby does have and shall maintain, as between Client and PRN, full and exclusive ownership of all Client



Proprietary Content, Client Solution and Client Marketing Information (collectively, "**Client Background IP**").

(b) **PRN Background IP.** PRN hereby does have and shall maintain, as between Client and PRN, full and exclusive ownership of all intellectual property owned or acquired by PRN existing prior to commencement of or outside this Agreement, even if such are utilized by Client hereunder (collectively, "**PRN Background IP**").

**10.2 Foreground IP.** All right, title, and interest in all intellectual property conceived, developed, or reduced to practice in the course of this Agreement by Client or PRN or any of their respective employees, Representatives, or agents, or those of such Party's affiliates (collectively, "**Related Parties**"), individually or jointly, including all inventions, discoveries, results, research tools, data, information, drawings, models, designs, algorithms, methods, documents, and fixed works resulting from or related to the activities performed by any of them under this Agreement or any Order Form (collectively, "**Foreground IP**"), hereby do and shall belong exclusively to PRN and, to the extent that by operation of law or otherwise such Foreground IP is not owned by PRN, Client hereby irrevocably assigns, sells, conveys, transfers, and agrees to deliver to PRN all right, title, and interest in all Foreground IP that Client may have acquired or may acquire by operation of law or otherwise, including the ownership of, or if applicable copyright in, the Foreground IP. PRN Background IP and Foreground IP are referred to as, collectively, "**PRN IP**." Client agrees to give PRN or its designees all assistance reasonably requested to perfect such rights. Client represents and warrants that all Client personnel, with respect to their work under this Agreement, have executed or will execute agreements to effect the assignment of Foreground IP to PRN as the sole owner of all right, title, and interest in, to and under any and all inventions and discoveries, whether or not patentable, made during such work. For the avoidance of doubt and without limiting the generality of the foregoing, PRN shall retain all rights, title, and interest in the DoseSpot Technology, including the Custom Portal, and whether made by either Party or jointly, any modifications, improvements, configurations or customizations made thereto, and any upgrades, updates or documentation provided to Client.

**10.3 No Data Backup.** The DoseSpot Platform does not replace the need for Client to maintain regular data backups or redundant data archives, including with respect to medical records. PRN DOES NOT HAVE ANY OBLIGATION OR LIABILITY FOR ANY LOSS ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF ANY OF CLIENT'S MATERIALS (INCLUDING MEDICAL RECORDS) INPUT INTO, MAINTAINED BY OR OTHERWISE AVAILABLE ON OR VIA THE DOESPOT PLATFORM.

**10.4 Further Assurances.** Client hereby agrees to cause each of its Related Parties to grant, convey and assign to PRN, by execution of separate instruments of assignment, all of their respective worldwide right, title, and interest in and to any Foreground IP as is necessary for PRN to fulfill its responsibilities under this Agreement. Client agrees to make available to PRN or such persons as it designates for interviews and/or testimony to assist in good faith with further prosecution, maintenance, or litigation with respect to intellectual property, including the signing of related documents. Any actual and reasonable out-of-pocket expenses associated with such assistance shall be borne by PRN, expressly excluding the value of the time of current Client employees giving assistance; *provided, however*, that in the case of assistance with litigation, the Parties shall agree on a case-by-case basis on compensation, if any, for the value of the time of such employees as reasonably required in connection with such

litigation.

**10.5 Ownership.** Client hereby irrevocably transfers and assigns to PRN any and all of Client's right, title, and interest in and to all Foreground IP. Foreground IP is hereby the sole property of PRN, and PRN has the sole right to determine its treatment. Client represents, warrants, and covenants to: (a) promptly disclose in writing to PRN all Foreground IP; (b) cooperatively assist PRN in applying for, and execute any applications and/or assignments useful or necessary to obtain, any patent, copyright, trademark, or other protection for Foreground IP in PRN's name as PRN deems appropriate; and (c) otherwise treat all Foreground IP as Confidential Information of PRN.

**10.6 Feedback.** If Client provides suggested or recommended changes, including new features or functionality relating thereto, or any ideas, comments, recommendations, suggestions, questions, or the like with respect to PRN's products and/or services, including the Custom Portal, any Integrations or APIs, SDKs, etc., or otherwise (collectively, "**Feedback**"), PRN will have the full, unencumbered right, without any obligation to compensate or reimburse Client, to incorporate such Feedback in its products or services, or otherwise modify, develop, or enhance its products or services or create new products or services based on such Feedback, and to fully develop, commercialize and exploit such resulting products and services irrespective of any other obligation or limitation governing such Feedback. To the extent Client has any intellectual property rights contained in the Feedback, Client hereby irrevocably assigns all right, title and interest in, and PRN is free to use without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or intellectual property rights. For the avoidance of doubt, this Section does not require PRN to use any Feedback.

**10.7 Client Modifications.** Client shall not modify, change, disable, or otherwise alter any aspect of the Licensed Technology, including the Custom Portal, in any manner (a "**Client Modification**"), without PRN's express prior written consent. As appropriate with respect to any such Client Modification, PRN will provide advance written notice to, and seek certification from, Surescripts.

**10.8 Negative Covenant.** Client acknowledges PRN's exclusive rights in the DoseSpot Technology, that the DoseSpot Technology is unique and original to PRN, and that PRN is the owner thereof. Unless otherwise permitted by law, Client shall not, at any time during or after the Term, dispute or contest, directly or indirectly, PRN IP, including PRN's exclusive right and title to the DoseSpot Technology, including the Custom Portal, and to any modifications, improvements, configurations or customizations made thereto, and any upgrades, updates or documentation. Client shall not dispute or contest, directly or indirectly, the validity of any PRN IP. If Client does dispute or contest such intellectual property rights, in addition to any other rights and remedies PRN may have, PRN may terminate this Agreement and all licenses granted hereunder.

**10.9 Indemnification.** By PRN. PRN will indemnify, defend and hold harmless Client from all damages, losses, costs and expenses (collectively "**Damages**") required to be paid by Client to an unaffiliated third party as a result of any claim, demand, suit or action (each a "**Claim**") by such unaffiliated third party alleging that Client's use of the DoseSpot Technology infringes the intellectual property rights of such third party, except that PRN will have no indemnification obligation with respect to any infringement resulting from the combination of the DoseSpot Technology with other products or services not provided by PRN or resulting from Client misuse of the DoseSpot Technology. If the DoseSpot

Technology is, or in PRN's determination is likely to be, subject to any such Claim regarding intellectual property rights, or if Client's or any Client user's use of the DoseSpot Technology is enjoined or threatened to be enjoined, PRN may, at its option and as its sole remedy (a) obtain the right for Client or such Client user(s) to continue to use the DoseSpot Technology materially as contemplated by this Agreement, (b) modify or replace the DoseSpot Technology so as to make it non-infringing, or (c) if neither (a) nor (b) is commercially feasible, terminate this Agreement or Order Form with respect to all or the affected part of the DoseSpot Technology, in which event Client shall immediately cease use of the DoseSpot Technology or affected part thereof and shall be entitled to a pro rata refund of the fees attributable to the portion of the then-current Order Form Subscription Term, as applicable, remaining immediately prior to such termination. Notwithstanding the foregoing, PRN shall have no obligation under this Section or otherwise with respect to any infringement claim based upon (i) the patent information (ii) any use of the Services not in accordance with this Agreement; (iii) any use of the Services in combination with other products, equipment, software or data not supplied by PRN; or (iv) any modification of the Services by any person other than PRN.

By Client. Client will indemnify, defend and hold harmless PRN from all Damages required to be paid by PRN as a result of (a) any Claim that arises out of any use of the DoseSpot Technology other than as expressly provided under this Agreement, or (b) as a result of Client's breach of its obligations under this Agreement or the Business Associate Agreement or Sub-Business Associate Agreement between the Parties, whichever applies, or (c) any violation of Applicable Law.

Procedures. If either Party intends to claim indemnification hereunder with respect to Damages arising from a Claim, then such Party (the "**Indemnified Party**") shall promptly notify the other Party (the "**Indemnifying Party**") in writing of such Claim after the Indemnified Party becomes aware thereof, and the Indemnifying Party shall assume the defense of such Claim and shall have the sole right to control the defense and settlement of such Claim. The Indemnifying Party shall have no obligation to indemnify the Indemnified Party for any Damages paid in settlement of any Claim if such settlement is effected without the consent of the Indemnifying Party. The Indemnified Party's delay in delivering prompt written notice to the Indemnifying Party after becoming aware of such Claim shall relieve the Indemnifying Party of liability under this Section 10.9 to the extent that such failure increases the Indemnifying Party's liability hereunder. The Indemnified Party shall cooperate fully with the Indemnifying Party and its legal Representatives in the investigation and defense of any matter covered by this indemnification, and the Indemnified Party may engage counsel to represent it at its sole cost and expense in connection therewith.

## **11. Limitation of Liability.**

**11.1 11.1 EXCLUSIONS. IN NO EVENT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, SHALL PRN, ITS AFFILIATES, OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, PERSONNEL, SUPPLIERS, THIRD PARTY PROVIDERS, OR LICENSORS (COLLECTIVELY, THE "PROTECTED ENTITIES") BE LIABLE FOR ANY INJURY, LOSS, CLAIM, OR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM, OR DIRECTLY OR INDIRECTLY RELATED TO, THE USE OF, OR THE INABILITY TO USE, THE SERVICES (INCLUDING ANY THIRD-PARTY PLATFORM, FEATURES, MATERIALS AND FUNCTIONS RELATED THERETO, CLIENTS**

**PROVISION OF INFORMATION VIA THE SERVICES, ANY PRESCRIPTION DRUG PROGRAM, LOST BUSINESS OR LOST SALES, EVEN IF SUCH PROTECTED ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, TO THE FULLEST EXTENT PERMITTED LAW. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CERTAIN CLIENTS. IN NO EVENT SHALL THE PROTECTED ENTITIES BE LIABLE FOR OR IN CONNECTION WITH ANY CONTENT POSTED, TRANSMITTED, EXCHANGED OR RECEIVED BY OR ON BEHALF OF CLIENT OR OTHER PERSON ON OR THROUGH THE SERVICES.**

**11.2 LIMIT. EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, IN NO EVENT SHALL PRN BE LIABLE TO CLIENT FOR CUMULATIVE DIRECT DAMAGES IN ANY AMOUNT GREATER THAN FEES ACTUALLY PAID OR DUE AND PAYABLE BY CLIENT TO PRN UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF THE CAUSE OF ACTION.**

## **12. Term and Termination.**

**12.1 Agreement Term.** This Agreement is effective as of the Agreement Date and continues until it is terminated in accordance with this Section 12 (the "**Term**").

**12.2 Subscription Term.** Each Subscription Term will continue for the period set forth in the applicable Order Form and, thereafter, will automatically renew for successive one (1) year Renewal Subscription Terms unless either Party delivers to the other Party written notice of non-renewal at least thirty (30) days' prior to the end of the then-current Subscription Term or this Agreement and/or the applicable Order Form is otherwise terminated in accordance with this Section 12.

**12.3 Termination for Cause.** In addition to any other remedies it may have, either Party may terminate this Agreement and/or any Order Form upon written notice if the other Party materially breaches this Agreement or such Order Form, respectively, and fails to cure such breach within thirty (30) days of receipt of written notice specifying the alleged breach.

**12.4 Termination by PRN.** Notwithstanding the foregoing or any other provision of this Agreement, PRN may terminate this Agreement and/or the applicable Order Form immediately for any reason with or without notice to Client..

**12.5 Termination by Client.** If PRN notifies Client of an increase in User Fees or other fees and charges under this Agreement for a Renewal Subscription Term in an amount greater than (a) five percentage points (5%), or (b) the increase in the Consumer Pricing Index for the prior twelve (12)-month period, whichever is greater, Client may terminate this Agreement upon providing written notice to PRN the later of (a) fifteen (15) days after the date of PRN's price- increase notice, and (b) thirty (30) days prior to the end of the current Term.

**12.6 Termination for Insolvency.** This Agreement may be terminated by either Party immediately upon written notice if the other Party (a) becomes the subject of any proceeding relating to insolvency, receivership or liquidation; (b) files a petition in bankruptcy; or has filed against it a petition in bankruptcy which is not discharged within ninety (90) days thereof; (c) makes an assignment for the benefit of its creditors; or (d) admits in writing its inability to pay debts as they become due. In the event a Party

becomes the subject of any bankruptcy proceeding, the other Party shall be entitled to the benefits afforded a licensee of intellectual property pursuant to the provisions of 11 USC Sec. 365(n).

**12.7 Termination for Non-Certification.** This Agreement may be terminated by either Party immediately upon written notice to the other Party in the event of a failure to complete Certification within one hundred twenty (120) days after the Agreement Date.

**12.8 Termination for Convenience.** If there are no Order Forms then in effect, either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party.

**12.9 No Election of Remedies.** The election by PRN to terminate this Agreement or any Order Form shall not be deemed an election of remedies, and all other remedies provided by this Agreement or available in law or equity shall survive termination.

**12.10 Survival.** Client's obligations to make any payments that have been earned or accrued through the effective date of termination of this Agreement or an Order Form shall nonetheless remain payable. The Cover Page, all defined terms, and Sections 5, 6, 7.3, 7.4, 7.5, 9, 10, 11, 12, 13 and 14 shall survive any termination or expiration of this Agreement.

### **13. Marketing.**

**13.1 Press Release.** The Parties may announce this Agreement in a mutually approved press release (which may be issued jointly or by PRN), which approval may not be unreasonably withheld, conditioned, or delayed. PRN may list Client's name and logo as a customer on its website and in other promotional materials.

**13.2 Trademarks.** Client may include in all of its advertising and promotional materials the PRN and/or DoseSpot logos and an objective statement that it uses the DoseSpot™ Platform. PRN may include in its advertising and promotional materials a statement that Client is an authorized user of the DoseSpot Platform. In each case, each Party shall adhere to the trademark and branding guidelines made available to it in writing by the other Party (which may be via a webpage), as such guidelines may be updated from time to time. Each Party agrees that the use of the other Party's trademarks inures to such other Party's benefit.

### **14. Miscellaneous**

**14.1 Notices.** All notices under this Agreement must be in writing and in the English language, and shall be deemed effectively given (a) upon personal delivery when hand-delivered to the Party to be notified; (b) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) business day after deposit with a nationally recognized overnight courier, with written verification of receipt. Notices must be sent to the addresses set forth on the Cover Page. Either Party may amend its address upon written notice to the other. A copy of every notice to PRN must be emailed to [Contracts@DoseSpot.com](mailto:Contracts@DoseSpot.com) concurrently for notice sent by any other means to be valid, email notice being a necessary but not sufficient component of valid notice to PRN (that is, email alone shall not be deemed sufficient or valid notice to PRN). Email to Client is not necessary for notice by other means to be valid.

**14.2 Assignment.** This Agreement may not be assigned by Client without the express written consent of PRN; *provided, however* that Client may assign this Agreement to a third party purchasing all or substantially all of Client's equity interests or assets via acquisition or merger without PRN's written consent *provided* that Client provides written notice of such acquisition or

merger to PRN as soon as a reasonably practical in anticipation of or upon the Closing of such acquisition or merger. Any purported assignment or transfer or delegation of rights or obligations under this Agreement in violation of this Section will be null and void. Subject to the foregoing, this Agreement will be binding upon each Party and its successors and permitted assigns.

**14.3 Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts without regard to anything that would require the application of the law of any other jurisdiction. Any and all disputes hereunder, other than PRN's claims for (a) nonpayment of User Fees, Certification Fees or other fees and charges due under this Agreement; (b) breach of intellectual property provisions; (c) breach of data privacy / HIPAA; or (d) violation of Applicable Law shall be brought within one (1) year of the date on which the Party becomes aware of any such action or claim or shall otherwise be fully and completely waived. Any and all disputes arising out of or relating to this Agreement shall be finally resolved by arbitration in accordance with JAMS Arbitration Rules then currently in effect, by one independent arbitrator. If the Parties fail to agree on the arbitrator within fifteen (15) days of commencement of the arbitration, then the Parties will allow JAMS to select the neutral arbitrator pursuant to its rules then currently in effect. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C., §§1 et seq. and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be Boston, Massachusetts. Each Party is required to continue to perform its obligations under this Agreement pending final resolution of any disputes arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances. Nothing in this Agreement shall prohibit a Party from instituting litigation to enforce any final determination by the arbitrator in any state or federal court in the Commonwealth of Massachusetts.

**14.4 Injunctive and Equitable Relief.** Notwithstanding Section 14.3, nothing in this Agreement is intended to prevent PRN from obtaining equitable or injunctive relief in any court of competent jurisdiction. Client represents and agrees that, without limitation, the following would cause irreparable harm to PRN, monetary damages alone would be inadequate as a remedy, the balance of hardships weighs in favor of PRN, and granting equitable or injunctive relief therefore would be appropriate: any breach or anticipatory breach of Client's obligations to PRN under this Agreement or any agreement with respect to (a) confidentiality and non-use of PRN's Confidential Information; (b) non-solicitation; (c) non-disparagement; and (d) intellectual property, including infringement, inducement, misappropriation, and misuse.

**14.5 Remedies.** Except as expressly stated herein: (a) each Party's rights and remedies shall be cumulative, not alternative; (b) if any action is necessary to enforce the terms of this Agreement, the substantially prevailing Party will be entitled to reasonable attorneys' fees, reasonable witness fees, costs, and expenses in addition to any other relief to which such prevailing Party may be entitled; and (c) PRN will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief without prejudice to any other rights and remedies that PRN may have for a breach of this Agreement.

**14.6 Audit.** During the Term and for five (5) years thereafter, or for such longer time as is required by Applicable Law, (a) Client shall maintain complete and accurate records with respect to the Services and all data needed to confirm Client's compliance with this Agreement, including to verify amounts to be paid to PRN, including without limitation, all Prescription Drug Program Consents, and (b) PRN will have the right, itself or through an



independent auditor selected by PRN, to audit Client's books and records and the facilities of Client (each, an "**Audit**") to confirm Client's compliance with this Agreement. PRN must give Client reasonable advance notice prior to the date of each Audit. Client shall cooperate with PRN and each auditor in the conduct of each Audit and provide full access to facilities, personnel, and information needed to complete each Audit. If any Audit reveals that Client has underpaid PRN by five percent (5%) or more in any month or has otherwise failed to comply with its obligations under this Agreement in any material respect, Client shall promptly reimburse PRN for all reasonable costs and expenses incurred by PRN in connection with such Audit and pay PRN any amounts shown by any such Audit to be owing plus the lesser of two percent (2%) interest compounding monthly or the maximum interest allowed by law.

**14.7 Interpretation.** For purposes of this Agreement: (a) titles and headings are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement; (b) the words "include(s)," "including," "for example," "e.g.," "etc.," "such as," "for instance," and "in particular" shall be not construed to exclude any other thing not referred to or described and shall be deemed to be followed by the words "without limitation"; provided that when combined with "only" (such as "include(s) only", "only including") such words shall be construed with limitation; (c) "A or B" means "A or B or both"; "either A or B" means "A or B, but not both"; and "A and B" means "both A and B"; (d) the definition given for any term shall apply equally to both the singular and plural forms of the term defined; and (e) unless the context otherwise requires, (1) references to a Section refer to a Section of these Terms of Service; (2) references to an agreement, instrument or other document (including this Agreement) mean such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (3) references to a statute means such statute as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder.

**14.8 Severability.** If any phrase or provision hereof is held by a court of competent jurisdiction to be invalid, unlawful, void, or unenforceable, to any extent, the remainder of this Agreement shall remain in full force and effect and such provision shall be deemed modified to be valid and enforceable to the maximum extent permitted by law.

**14.9 Even-Handed Construction.** The terms and conditions as set forth in this Agreement have been arrived at after mutual negotiation, and both Parties participated and had the opportunity to participate in drafting this Agreement being fully advised by their respective legal counsel and other advisors. It is the intention of the Parties that this Agreement not be construed against any Party merely because it was prepared by one of the Parties, and no ambiguity shall be construed against a Party based upon a claim

that it drafted the language at issue. Each of the Parties acknowledges, represents, and agrees that it (a) has read this Agreement, (b) fully understand its terms; (c) has had the opportunity to be fully advised by its legal counsel and any other advisors; and (d) has executed this Agreement after sufficient review and understanding of its contents.

**14.10 Entire Agreement.** This Agreement states the entire agreement between the Parties relating to its subject matter and supersedes all prior and contemporaneous agreements, understandings, and communications, whether written or oral, between the Parties relating thereto, excluding (a) the Business Associate Agreement or Sub-Business Associate Agreement between the Parties, whichever applies, and (b) except as expressly set forth herein, any Non-Disclosure Agreement (the "**NDA**") between the Parties with respect to information disclosed prior to the Agreement Date under such NDA. Any of Client's terms and provisions included on or attached to any purchase order or

invoice will be void and will have no legal effect to the extent they are inconsistent with or in addition to the provisions of this Agreement, and such Client-provided terms and provisions will not be binding on PRN.

**14.11 Waiver; Amendment.** All waivers must be in writing and signed by an authorized representative of the Party to be charged. The failure of a Party to require or enforce any provision or right hereunder, or a Party's waiver of any breach of this Agreement, shall not act as a bar to subsequent requirement or enforcement of such provision or right or be deemed a waiver of any other breach.

Except as otherwise set forth herein, including in Section 5.6, PRN may revise this Exhibit A at any time and without notice to Client. Client is responsible for regularly reviewing these Terms of Service. Any revised Terms of Service will be effective when posted by PRN. Client's continued use of the DoseSpot Platform and/or DoseSpot Technology indicates Client's acceptance to any revised Terms of Service.

**14.12 Due Authority.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

**14.13 Counterparts.** This Agreement may be executed in any number of counterparts and transmitted by PDF or other electronic format, each of which when so executed and duly delivered will be deemed an original for all purposes, and all of which together shall constitute one and the same agreement.

*Remainder of page deliberately left blank.*