



General Terms and Conditions

For Purchase, License and/or Professional Services

These general terms and conditions apply to the purchase and/or license of equipment and/or Licensed Software and/or the performance of Professional Services between Aceso Interactive, Inc. (“Aceso”) and the respective Client listed on an Order Document, which reference these terms and conditions (“Client”). The parties expressly agree that any general terms and conditions listed on Client’s purchase order or other preprinted document of Client shall not apply unless Aceso has expressly agreed, in writing, that such terms and conditions apply. Notwithstanding anything herein to the contrary, in the event Aceso and Client have a written supply, purchase and/or license agreement (an “Alternative Purchase Agreement”), which has been executed prior to the date specified on the Order Document, then such Alternative Purchase Agreement shall apply to the Order Document, unless expressly agreed otherwise.

All Order Documents presented by Aceso are offers to Client for Aceso to provide equipment, Licensed Software and/or Professional Services. A contract shall be deemed executed once any of the following occur, which each constitutes Client’s acceptance of Aceso’s offer stated in the applicable Order Document: a) Aceso receives a Client purchase order in response to an Order Document; and/or b) Client has issued a payment to Aceso pursuant to an Order Document; and/or c) Client has signed the Order Document; and/or d) Aceso has dispatched equipment, Licensed Software, Licensed Content, HTV Application and/or Professional Services, in accordance with the Order Document and Client’s request.

NOW, THEREFORE, in consideration of the mutual provisions and conditions set forth herein, and intending to be legally bound, the Parties agree as follows:

1. Definitions.

“Aceso Content” or “Licensed Content” means content owned by Aceso or Aceso’s licensor(s) and licensed to Client, which is listed on the applicable Order Document. Aceso Content is a menu of choices for the Client and is displayed via the equipment.

“Aceso Software” means Aceso’s proprietary software listed on an Order Document and shall also include any fixes, patches, modification, enhancements and/or upgrades to such software provided to Client.

“Business Associate Agreement” shall mean the business associate agreement attached herein as Exhibit

D.

“Client Content” means the content owned by Client, or Client’s licensors, and delivered to Client’s users via the equipment.

“Content” mean video content displayed via the equipment.

“HTV Equipment” means equipment specifically related to digital signage, which is listed on an Order Document.

“Order Document” means any document listing a set of products and/or services Client purchases or licenses from Aceso. An Order Document shall include, but not be limited to, a schedule or exhibit to these terms and conditions, a Client purchase order, a valid Aceso quotation accepted by Client, and/or a statement of work signed by Client.

“Licensed Software” means the software listed on an Order Document, including Aceso Software. Licensed Software also includes Third Party Product(s) and Open Source Material(s) that are licensed to Aceso and sub-licensed to Client pursuant to the end user license agreement attached herein as Exhibit A. Licensed Software shall also include any fixes, patches, modifications, enhancements and/or upgrades to such software provided by Aceso to Client.

“Subscription & Maintenance Services” or “Operating Fees” means the on-going annual license to use the Licensed Software and Maintenance Services of such Licensed Software, Licensed Content and/or HTV Application, as stated within the applicable Order Document.

“Maintenance Services” is provided pursuant to the Maintenance and Support Agreement attached herein as Exhibit B.

“Open Source Material” means any software, library, utility, tool, or other computer or program code (collectively, “Code”) that is licensed or distributed as “free software”, “freeware,” “open source software” or under any terms or conditions that impose any requirement that the Code or any software using, linked with, incorporating, distributed with, based on, derived from or accessing the Code and which is: (1) made available or distributed in source code form; (2) licensed for the purposes of making derivative works; (3) licensed under terms that allow reverse engineering, reverse assembly or disassembly of any kind; or (4) may be redistributable at no charge. Open Source Material includes, without limitation, any Code (Executable or source) licensed or distributed under any of the following licenses or distribution models or similar licenses or distribution models: the GNU General Public License (GPL), GNU Lesser General Public License, or GNU Library General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL) and the Apache License.

“Professional Services” means the consulting services performed by Aceso for Client, as specifically set forth in a mutually agreeable Statement of Work or Order Document.

“Statement of Work” or “SOW” means a separate agreement executed by the Parties which sets forth specified Professional Services to be performed by Aceso for Client.

“Third Party Product” means application software products provided by third party vendors, including operating system and application software with which the Licensed Software interfaces and which provides certain functionality essential to the operation of the Licensed Software.

“Work Product” means all materials, customized software, tools, data, inventions, and works of authorship and other innovations of any kind developed by Aceso for Client, pursuant to a Statement of Work or Order Document.

2. Agreement to Purchase or License.

2.1 Scope of Agreement.

Aceso agrees to sell, license, sublicense, or otherwise provide, only as ordered by Client, the equipment, Licensed Software, Licensed Content, HTV Application, Professional Services, and/or Maintenance and Support Services, as specifically set forth in an Order Document.

Unless otherwise agreed to by the parties in an Order Document or Statement of Work, any Aceso product(s) purchased or licensed during the Term shall be deemed accepted by Client upon the earlier of a) ten (10) business days after implementation, and b) Client’s first use of the product(s) in a production environment.

3. Pricing; Payment and Taxes.

3.1 Price & Payment of the Licensed Software.

Client shall ensure Aceso timely receives the purchase price for any equipment, Professional Services, Subscription & Maintenance Services fees, as set forth in an Order Document.

3.2 Invoicing/Taxes/Reimbursable Expenses.

3.2.1 Unless otherwise stated in the applicable Order Document, Client shall pay Aceso within thirty (30) days of receipt of an invoice to Client by Aceso. Client is responsible for, and shall pay all taxes or duties, fees and governmental charges, however designated (including personal property tax, sales tax, and use taxes) resulting from the licensing or use of the equipment, Licensed Software, Licensed Content, HTV Application and/or Professional Services.

3.2.2 Reimbursable Expenses. Client shall reimburse Aceso for all reasonable and customary out-of-pocket expenses including, without limitation, travel and living expenses, incurred by Aceso in the performance of Professional Services, as stated on an Order Document. Reimbursable expenses shall be invoiced on a monthly basis, or such other intervals as mutually agreed. Upon request by Client, Aceso shall provide copies of documentation for such expenses. Payment for reimbursable expenses shall be in accordance with Paragraph 3.2.1 above.

3.3 Delivery.

The delivery of any equipment shall be F.O.B. Destination (Client's premises). Client shall be responsible for all freight or carrier charges, insurance premiums and any other shipping or transportation charges (together "Transportation Charges") with the delivery of the equipment, if any. Aceso shall prepay and invoice Client for all Transportation Charges. In no event will Aceso be liable to Client for any damages, whether direct, indirect, incidental, consequential or otherwise for delays in shipment or delivery, or any error(s) in the filling of subsequent orders.

3.4 Title.

All rights, title and interest in the equipment shall pass to Client, upon Aceso's or its designate, receipt and acceptance of the full purchase price, as set forth in the applicable Order Document. Notwithstanding the foregoing, all ownership right, title, and interest in and to the HTV application (including HTV Equipment), Licensed Software, Aceso Content and any related documentation shall remain with Aceso or its licensors, and Client acknowledges that no such right, title, or interest in or to such Licensed Software, Content and related documentation is granted under this Agreement other than the specified limited right of use stated in Paragraph 4 below.

4. License Grant

4.1 Grant of Right to Licensed Software and Aceso Content

Provided Client has paid its then current monthly software license fees as set forth in an Order Document, Aceso grants Client the right to use the Licensed Software and Licensed Content listed on such Order Document, subject to the End User License Agreement, attached herein as Exhibit A.

4.2 Grant of Right to Work Product(s).

(a) Unless otherwise specified in the applicable SOW or Order Document, ownership of any Work Product(s) set forth in such SOW or Order Document shall be solely owned by Aceso or Aceso's licensors, as applicable. Client hereby assigns all rights it may have in such Work Product(s), and in all related patents, trade secrets, rights of priority and other proprietary rights to Aceso. Client acknowledges Aceso

in its sole discretion shall have the right to license a Work Product(s) or any portion thereof and/or incorporate the Work Product(s) or any portion thereof into Aceso Software, for use by other licensees.

(b) Aceso grants to Client a non-transferable, non-exclusive license to use, display, and perform any Work Product(s) solely in accordance with the End User License Agreement.

5. Professional Services, Maintenance & Support Services

5.1 Professional Services.

Non-Solicitation. In recognition of their mutual interests, Aceso and Client agree that, during the term of any project and for twelve (12) months following the termination of such project (the “Non-Solicitation Period”), neither Party will solicit any employee, agent or subcontractor of the other Party who was in any way involved in performance of Professional Services rendered under the applicable SOW; provided, however, that this provision shall not be construed as prohibiting either Party from hiring any such employee who applies for employment with the other Party (I) by responding to a job posting of such party published in a periodical or elsewhere or through any other normal hiring channels of such other Party; or (ii) as a result of any contact hereafter established by an independent third party.

5.2 Support Services.

For so long as Client has paid its then current Software, Maintenance & Support fees set forth in all applicable Order Document(s), Aceso shall maintain the equipment, Licensed Software and Aceso Content in satisfactory operational condition during the Term of this Agreement, in accordance with the terms of the Maintenance & Support Agreement, attached as Exhibit B herein.

6. Confidential Information

6.1 Definition

The term “Confidential Information” shall mean non-public information disclosed by (or on behalf of) one party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances in which it is presented. Confidential Information shall also include, but not be limited to the following: (a) Aceso’s marketing and other business methods and processes; (b) all technical and operational aspects of the Licensed Software, including all Licensed Software, Licensed Content, user manuals and/or other documentation; (c) information concerning either Party’s internal business; (d) information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (e) Individually Identifiable Health Information (as defined at 45 C.F.R. §164.501) concerning Client’s patients.

6.2 Protection, Use and Disclosure.

Each Party (hereinafter, the “Receiving Party”) will maintain all Confidential Information of the other Party (hereinafter, the “Disclosing Party”) in strict confidence and will not at any time or for any reason disclose any Confidential Information of the other to any unauthorized third party without the Disclosing Party’s prior written consent. Neither Party will use any Confidential Information of the other for any purpose whatsoever except in performing its duties and exercising its rights under this Agreement. Neither Party will disclose any Confidential Information of the other to any of its agents, contractors or employees who do not participate directly in the performance of its duties or exercise of its rights under this Agreement or otherwise have a bona fide reason to know such Confidential Information, and each Party will advise its agents, contractors and employees who are permitted access to any Confidential Information of the other Party, of the restrictions upon disclosure and use set forth in this Agreement and shall be responsible for any failure by such agents, contractors and employees to comply with the provisions of this Section. Pursuant to the foregoing, and not in limitation thereof (except in the case of emergency), access to non-public aspects of the Licensed Software will not be given to any person or persons other than personnel authorized by Client. Notwithstanding the foregoing, the Receiving Party may disclose the Confidential Information of the Disclosing Party if it believes in good faith that any applicable law, rule, or regulation requires the disclosure; provided that the Receiving Party makes a reasonable effort to give the Disclosing Party as much advanced notice as is practicable of such requirement; and, provided further, that any such disclosure is limited in content and manner to that which is so required.

6.3 Exclusion.

Confidential Information does not include any information or development: (a) which is or subsequently becomes available to the general public other than through a breach by the Receiving Party; (b) which is already known to the Receiving Party before disclosure by the Disclosing Party and can be evidenced as such; (c) which is independently developed by the receiving Party without use of or reference to the Confidential Information of the other; or (d) which the Receiving Party rightfully receives from third parties not under a duty of confidentiality owing to the Disclosing Party.

6.4 Business Associate Agreement

To the extent Aceso receives, in the performance of Services, any Protected Health Information [as that term is defined in the Health Insurance Portability and Accountability Act and regulations promulgated thereunder (“HIPAA”)], Aceso agrees to be bound by the terms and conditions of the Business Associate Agreement, attached herein as Exhibit D.

7. Warranties; Limitations of Liability.

7.1 Equipment:

With the exception of HTV Equipment, Client has selected the equipment and supplier from whom Aceso shall purchase on behalf of Client, as more specifically listed in an Order Document. Aceso is not the manufacturer or provider, as applicable, of such equipment, and Aceso is supplying such products to Client “as is.” Client has selected the equipment and Aceso makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose in connection with any equipment purchase. Aceso transfers to Client for the Term of this Agreement all warranties, if applicable, made by the supplier of the equipment.

7.2 Software.

Aceso warrants the following:

(a) Aceso Software. For so long as Client is current on the applicable Subscription & Maintenance Fees, Aceso warrants the Aceso Software listed in the applicable Order Document will materially perform in accordance with its published specifications. In the event of any failure of the Aceso Software to perform as warranted, Client’s sole remedy is as follows: Aceso will use all reasonable commercial efforts to repair or circumvent the defect, in Aceso’s sole discretion, including the replacement of such Aceso Software.

(b) The warranty set forth in paragraph 7.2(a) above does not apply to: (a) damage or failure of the Licensed Software to perform as a result of Client’s accident, misuse, abuse or neglect of the Licensed Software; or (b) in-operability of the equipment to which the License Software is installed; (c) damage or failure of the Licensed Software to perform resulting from the failure to follow any Aceso provided instructions, including instructions on installation, implementation or servicing of the Licensed Software or equipment; or (d) failure by Client to allow Aceso to install Maintenance Releases of the Licensed Software, as required by Aceso or its third party licensors; or (e) failure of the Licensed Software if the Licensed Software has been modified, altered, serviced, or repaired by someone not authorized in writing by Aceso; or (f) damage or failure to perform resulting from causes other than Licensed Software defects, including lack of technical skills, competence or experience of Client personnel, patients or visitors, (g) inadequate performance resulting from Client’s decision to implement an equipment configuration having insufficient interactive resources or capacity, or (h) use of any third-party equipment, software or content with the Licensed Software not authorized by Aceso.

(c) Professional Services. For all professional services performed pursuant to a SOW or Order Document, Aceso warrants that such professional services shall be expertly performed in a timely, professional and workmanlike manner, which meets or exceeds the prevailing standards in the industry, and in accordance

with all applicable specifications set forth in the statement of work. Client's sole remedy for breach of this warranty shall be Aceso re- performing such services.

(d) Aceso warrants that (a) it has the full right, power and authority to enter into this Agreement and to perform all of its obligations hereunder; and (b) the execution of this Agreement and the performance of its obligations hereunder do not and will not constitute any material breach of any other agreement to which Aceso is a party.

7.3 Client Warranties.

Client warrants to Aceso that (a) it has full right, power and authority to enter into this Agreement and to perform all of its obligations hereunder; and (b) the execution and delivery of this Agreement and the performance of its obligations hereunder do not and will not constitute any material breach of any agreement to which Client is a party; and (c) it has title to and ownership in the Client Content, or, in the alternative, is licensed to copy and/or distribute and display such Client Content via the Licensed Software. Additionally, in the event Client has licensed the Aceso eCareboard software, Client warrants it has obtained prior approval from each patient to whom Protected Health Information [as that term is defined in the Health Insurance Portability and Accountability Act and regulations promulgated thereunder ("HIPAA")] is displayed on any eCareboard screen.

7.4 Disclaimer.

EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 7 HEREIN, EACH PARTY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO THIS AGREEMENT AND THE EQUIPMENT, LICENSED SOFTWARE, ACESO CONTENT AND ANY SERVICES TO BE PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE FOREGOING WARRANTIES OF ACESO, AND OTHER ACESO WARRANTIES IN THIS AGREEMENT, ARE PROVIDED ONLY TO CLIENT. ACESO MAKES NO WARRANTIES, EXPRESS OR IMPLIED, TO ANY THIRD PARTIES, INCLUDING PATIENTS. ACESO MAKES NO WARRANTIES THAT THE SYSTEMS AND CONTENT PROVIDED HEREUNDER WILL SATISFY ALL OF CLIENT'S REQUIREMENTS NOR SHALL THE EQUIPMENT, SOFTWARE AND CONTENT PROVIDE HEREUNDER OPERATE ERROR -FREE.

7.5 Limitation of Liability.

EXCEPT FOR ANY PAYMENTS TO BE MADE ON ACCOUNT OF ACESO'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 HEREOF, OR FOR ITS MISAPPROPRIATION OF ANY OF CLIENT'S INTELLECTUAL PROPERTY RIGHTS, ACESO'S ENTIRE LIABILITY UNDER THIS

AGREEMENT, FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING ACESO'S NEGLIGENCE, OR OTHERWISE, RELATING TO THIS AGREEMENT, THE SALE OR LICENSING OF THE LICENSED SOFTWARE, OR THE USE, INABILITY TO USE OR PERFORMANCE OF THE LICENSED SOFTWARE OR THE PERFORMANCE OR PROVISION OF ANY CONTENT, MAINTENANCE, SUBSCRIPTION OR OTHER SERVICES UNDER THIS AGREEMENT, SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY CLIENT TO ACESO DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIM.

8. Term of Agreement; Termination.

This Agreement shall become effective on the Effective Date and shall continue for a period of sixty (60) months, unless otherwise noted in Client's first Order Document (the "Initial Term"). Following such Initial Term this Agreement may be renewed and/or extended for successive additional terms (each a "Renewal Term", and together with the Initial Term, the "Term") by agreement of the Parties via an Order Document. Unless otherwise stated in the applicable Order Document, during the Term and no more than once in any calendar year, Aceso may incorporate a reasonable annual increase in the Subscription & Maintenance Service fees, not to exceed the lesser of a) 3% or b) the current consumer price index. All such fee increases shall not occur unless Aceso has given Client at least sixty (60) days advance written notice of such increase.

8.1 Termination for Client's Failure to pay Fees.

The responsibilities of Aceso shall automatically be suspended if, at any time, during the Term the Subscription & Maintenance Fees, as defined in an Order Document, are not timely paid by Client, according to the applicable payment terms.

8.2 Termination for Cause.

Either party may terminate this Agreement by notice to the other Party if: (I) the other party breaches any material term of this Agreement and fails to cure such breach within forty-five (45) days following written notice thereof; or (ii) the other party either (a) announces a cessation of its entire business; or (b) elects to dissolve and wind-up its business; or (c) makes a general assignment for the benefit of creditors; or (d) petitions for or appoints (or a third party causes to be appointed for such party) a receiver, custodian or trustee to take possession of all or substantially all of such party's property. Neither party shall be liable to the other, whether for compensation, reimbursement for investments or expenses, lost profits or goodwill, direct, indirect, incidental, consequential or special damages, or damages of any other kind or character, because of any proper termination of this Agreement or a Schedule as provided hereunder, or because of any election to refrain from extending this Agreement upon the expiration of the Initial Term or any

Renewal Term.

8.3 Effect of Termination

Upon termination (including expiration) of this Agreement for any reason, Client shall return to Aceso, or certify to Aceso in writing that it has destroyed, all Licensed Software, Licensed Content and/or HTV Application software in its possession. Additionally, each Party shall return to the other Party, or certify to such other Party it has destroyed, all Confidential Information of such other Party it has in its possession.

8.4 Non-Cancellation Provision.

This Agreement is being executed by the parties with the understanding that this Agreement is non-cancellable during the Initial Term, except pursuant to the limited conditions stated in Sections 8.1 and 8.2 above. Client understands and acknowledges in the event Client terminates this Agreement, without cause, during the Initial Term, Aceso shall be entitled to all amounts due and stated in the then executed Order Document(s) for the remainder of the Initial Term.

9. Indemnification; Waiver of Claims. 9.1 Indemnification by Aceso.

Aceso shall indemnify and hold harmless Client and its officers, directors and employees (collectively, "Client Party(ies)") from and against any third party claims asserted against Client Parties (a) relating to bodily injury or death of any person or damage to real and/or tangible personal property caused by an Aceso employee or authorized agent acting within the course and scope of this Agreement; or, (b) alleging the Aceso Software infringes a United States patent, trademark, copyright or trade secret of the third party (collectively, "Claims") and, subject to the provisions of Section 9.3, will indemnify and hold Client Parties harmless from and against any liability or damages payable to such third parties from such Claims whether by judgment or settlement, and any costs or expense (including reasonable attorneys' fees) incurred in defending any such Claims. If, at any time, Aceso believes that any portion of the Aceso Software is or may be held to constitute an infringement, then, in addition to the indemnification set forth above, Aceso shall be entitled, at its discretion, to either procure for Client the right to continue using the Aceso Software, or replace or modify the Aceso Software so that it becomes non-infringing, provided that such replacement or modification has the same or greater functional characteristics as the possibly infringing Aceso Software, or, if the prior two (2) remedies are commercially impractical, refund to Client the portion of the charges paid by Client for the Aceso Software feature that is deemed to be infringing based upon a sixty (60) month depreciation schedule. Aceso shall not be liable to Client under the terms of this Section 9.1 or otherwise if any infringement or claim is based upon the use of any Aceso Software other than for in accordance with the EULA, or in combination with any software other than that expressly approved by Aceso in writing, or if such infringement or claim results from any modification of the Aceso Software other than by Aceso's employees or authorized agents.

9.2 Indemnification by Client.

Client shall indemnify and hold harmless Aceso and its officers, directors, employees and authorized agents (“Aceso Party(ies)”), from and against any and all third party claims asserted or suits or proceedings brought against them alleging or resulting from: (a) bodily injury or death of any person or damage to real and/or tangible personal property caused by a Client employee, agent or contractor acting within the course and scope of his or her employment, and/or (b) Client's use of the Licensed Software or equipment (including Client's failure to charge, collect or remit any taxes required to be charged for the provision of Content to patients or otherwise from the operation of the Licensed Software), except to the extent covered by Aceso's indemnification under Section 9.1 above, and/or (c) any claims brought against an Aceso Party alleging the Client Content infringes a United States patent, trademark, copyright or trade secret of a third party, and/or (d) any theft, misappropriation or unauthorized copying or use of the Aceso Content, and/or (e) the display of any Protected Health Information (as that term is defined in the Health Insurance Portability and Accountability Act and regulations promulgated thereunder (“HIPAA”) on the equipment, HTV Application, and/or eCareboard equipment, and/or (f) any modification or amendment to the Licensed Software other than by Aceso or its employees or agents (collectively, “Claims”), and, subject to the provisions of Section 9.3, will indemnify and hold Aceso Parties harmless from and against any liability or damages payable to such third parties from such Claims whether by judgment or settlement, and any costs or expense (including reasonable attorneys' fees) incurred in defending any such Claims.

9.3 Indemnification Procedure.

The indemnification provided for in Sections 9.1 and 9.2 above are subject to the following terms and conditions: (a) the party claiming indemnification ("Indemnified Party") must notify the other party ("Indemnifying Party") promptly in writing of any notice of the claim subject to indemnification; (b) the Indemnifying Party shall have sole control over such defense and all negotiations for the settlement and compromise of such claim; provided that the Indemnifying Party may not settle or compromise such claim without the consent of the Indemnified Party (which consent will not be unreasonably withheld or delayed) unless such settlement or compromise requires only the payment of money damages to the claimant which is paid in full by the Indemnifying Party; (c) for so long as the Indemnifying Party is diligently conducting such defense, it shall not be liable for any separate attorney's fees of the Indemnified Party; and (d) the Indemnified Party shall cooperate with the Indemnifying Party in a defense and settlement of any such claim; provided that the Indemnifying Party shall not be liable hereunder for any settlement or compromise negotiated by the Indemnified Party unless the Indemnifying Party agrees in writing to be so bound. If the Indemnified Party provides notice of a claim in accordance with (a) and is not notified within 10 business days thereafter that the Indemnifying Party intends to defend the claim, the Indemnified Party shall be entitled to defend such claim, and settle or compromise such claim, subject to the indemnification provided

for herein.

9.4 Insurance.

Each party shall procure and maintain insurance adequate to cover its obligations hereunder and which are consistent with normal business practices of prudent companies similarly situated. It is understood that such insurance shall not be construed to create a limit of either party's liability with respect to its indemnification obligations under this Section 9. Each party shall provide the other with written evidence of such insurance upon request. Each party shall provide the other with written notice at least fifteen (15) days prior to the cancellation, non-renewal or material change in such insurance or self-insurance which materially adversely affects the rights of the other party hereunder. If such party does not obtain replacement insurance or take other measures that allow it to provide comparable coverage within such 15-day period, the other party shall have the right to terminate this Agreement effective at the end of such 15-day period without notice or any additional waiting periods.

10. General Terms and Conditions.

10.1 Applicable Law.

This Agreement shall be governed in all respects by the laws of the commonwealth of Massachusetts without regard to the law of such state as to conflicts of law principles. The parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to their relationship.

10.2 Compliance with Laws.

Each Party will comply with all laws, regulations and ordinances applicable to such party in the exercise of its rights and obligations under this Agreement. Aceso certifies on behalf of itself and its individual directors and officers that it has never been excluded, debarred, suspended or otherwise determined to be ineligible from participation in any federally-funded health care program, including but not limited to Medicare, Medicaid and CHAMPUS, and no proceedings are pending or have been threatened which might result in debarment, exclusion, or determination of ineligibility.

10.3 Omnibus Reconciliation Act of 1980.

Client and Aceso agree to make available upon the written request of the United States Secretary of Health and Human Services or the Comptroller General, or their representatives, this Agreement and such books, documents and records as may be necessary to verify the nature and extent of the costs of the services rendered hereunder to the full extent required by the Centers for Medicare and Medicaid Services implementing Section 952 of the Omnibus Reconciliation Act of 1980, codified at 42 U.S.C. Section

1395x(v)(1)(l), or by any other applicable federal or state authority.

10.4 Severability of Provisions.

If any provision of this Agreement is found or held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the enforceability and binding nature of any other provision(s) of this Agreement, unless such remaining provisions are not reasonably adequate to accomplish the basic purposes and intent of the Parties. The Parties hereto will negotiate in good faith to replace any invalid or unenforceable provision with one or more valid provisions that accomplish the original intent and economic agreement of the Parties.

10.5 Complete Agreement.

This Agreement (including all Exhibits and corresponding Order Documents) is the complete understanding of the Parties hereto with respect to the subject matter hereof, including with respect to the terms and conditions of the license of the Licensed Software and the provision and performance of Services hereunder, and no other agreements or any different or additional terms and conditions contained in any order form, Client purchase order, acknowledgement or other business form shall be binding upon the Parties hereto, or shall be effective to interpret, change or restrict the provisions hereof, unless the parties agree in writing.

10.6 Authority.

Each individual executing this Agreement in a representative capacity, by his or her execution hereof, represents and warrants that such person is fully authorized to do so on behalf of the respective Party hereto. If Client is not the owner of the Permitted Facilities, Client shall notify Aceso and arrange for the owner to execute an appropriate consent in a form supplied by Aceso.

10.7 Interpretation.

The headings of the various sections herein are for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Agreement. Whenever the context reasonably requires, references in this Agreement to the singular number shall include the plural and, likewise, the plural number shall include the singular, and words denoting gender shall include the masculine, feminine and neuter. The term “including” does not limit the preceding words or terms. Any direct or implied reference in this Agreement to the “sale” of software or any other intellectual property shall be deemed to mean the sale of a license to such software or other intellectual property.

10.8 Multiple Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute but one and the same

instrument. Electronic signatures shall be deemed as originals between the Parties.

10.9 Relationship of the Parties.

Nothing contained in this Agreement shall be deemed to create a joint venture, partnership or agency relationship between the Parties hereto, regardless of any obligation of Client relating to the operation or maintenance of the Licensed Software, and neither Party is authorized to act toward third parties in any manner which would indicate any such relationship with the other or to bind the other.

10.10 Assignment.

Except as otherwise provided herein, neither Party may assign or transfer this Agreement or any rights or obligations hereunder, by operation of law or otherwise, without the other Party's express prior written consent, provided that no consent shall be necessary in connection with an assignment or transfer to a successor-in-interest of a Party or a successor-in-interest to the portion of a Party's business which performs this Agreement, whether such assignment or transfer is pursuant to an asset sale, merger or otherwise, so long as the assigning Party provides the other Party with reasonably prompt written notice of such assignment. Subject to the foregoing, this Agreement will bind and inure to the benefit of and be binding upon each Party and its permitted successors and assigns. Notwithstanding the foregoing, Aceso shall be able to assign this Agreement without Client's consent for purposes of obtaining, maintaining, or replacing secured financing.

10.11 Non-Common Carrier/No Third Party Beneficiaries.

The Parties hereto acknowledge that the Services offered hereunder have been privately offered and will be privately furnished on a non-common carrier basis. Neither Aceso nor Client regards any representations, offers or undertakings made by the other in connection with this Agreement as being in the nature of offers of common carriage. So long as the Parties do not substantially change their manner of offering the services hereunder, neither will attempt, now or in the future, to assert, through legal process, directly or indirectly, any questions of common carriage regarding the relationship between the Parties. In addition, nothing contained in this Agreement shall be deemed or construed by the Parties hereto or any other third party to create any rights, obligations or interests in, or confer any benefits upon, third parties.

10.12 Survival of Provisions.

In addition to any other provisions of this Agreement that by their terms survive the termination or expiration of this Agreement or that must survive in order to give meaning to other provisions of the Agreement, the following provisions of this Agreement will survive termination or expiration of this Agreement: Sections 6 ("Confidentiality") and 10 ("General Terms and Conditions").

10.13 Force Majeure.

Neither party shall have any liability for the failure to perform or a delay in performing any of its obligations under this Agreement (exclusive of the obligation to pay any amounts which may be due hereunder), if such failure or delay is the result of any legal restriction, labor dispute, strike, boycott, flood, fire, public emergency, revolution, insurrection, riot, war, unavoidable mechanical failure, internet connectivity issues, interruption in the supply of electrical power or any other cause beyond the control of that Party.

EXHIBIT A

End User License Agreement

By using the Licensed Software and/or Aceso Content Client agrees to the terms of this End User License Agreement (“EULA”) between Client and Aceso Interactive, Inc. (“Aceso”). Client’s use of the Licensed Software is governed by these terms.

This EULA gives you specific legal rights, and you may also have other legal rights in addition, which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability under this EULA will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of this EULA may not apply to you.

1. License.

(a) Aceso grants to Client a non-transferable, non-exclusive license to use, display, and perform the Licensed Software and/or Aceso Content solely to provide interactive engagement and entertainment services to Client’s patients, visitors and staff at the Permitted Facility(ies) listed on the applicable Order Document, and on the number of authorized television screens specified in such applicable Order Document. Client shall not allow any third party to (i) use or copy all or any portion of the Licensed Software except as stated in this EULA; or (ii) cause or permit the reverse engineering, disassembly or de-compilation of the source code of the Licensed Software or Aceso Content or any portion thereof; or (iii) modify or change the Licensed Software or Aceso Content; or (iv) translate or create any derivative works of the Licensed Software (other than using Aceso-provided system editors) or Aceso Content; or (v) sublicense, rent, loan, lease, transfer, grant access to or otherwise distribute the Licensed Software or Aceso Content to any other person or entity, except as specifically allowed in this EULA; or (vi) use the Licensed Software or Aceso Content to provide services to third parties in a time-sharing, service bureau or application service Client arrangement unless otherwise agreed upon in writing by Aceso. At no time may Client transfer any license granted herein, whether voluntarily or by operation of law.

(b) Client hereby agrees that any encumbrance upon Client’s property, both real and personal, shall expressly exclude the Licensed Software and Aceso Content as well as the intellectual property rights embodied in the Licensed Software and/or Aceso Content. Client further agrees that Aceso has the right to take such actions as Aceso may believe reasonably necessary to give public notice of the ownership of the aforementioned Licensed Software and/or Aceso Content and intellectual property and to protect Aceso’s ownership thereof against third parties. Additionally, Client acknowledges that the technical, operational and marketing aspects of the Licensed Software and Aceso Content are proprietary to Aceso or Aceso’s licensors.

(c) All rights not specifically granted herein shall be reserved to Aceso or its licensors. 2. Intentionally Left Blank. 3. Automatic Software Updates.

Aceso or its licensors may from time to time develop engineering changes to correct operational deficiencies and errors to the Licensed Software (“Maintenance Releases”). These Maintenance Releases may be automatically installed without providing any additional notice or receiving any additional consent. Client consents to these automatic update(s). If Client does not want such Maintenance Releases, Client’s remedy is to stop using the Licensed Software. Client acknowledges that it may be required to install Maintenance Releases to use the equipment and the Licensed Software and Client agrees to promptly install any Maintenance Releases Aceso provides.

4. Ownership.

The Licensed Software and Aceso Content and all worldwide copyrights, trade secrets, and other intellectual property rights therein are the exclusive property of Aceso and/or its licensors. Aceso and/or its licensors reserve all rights in and to the Licensed Software and Aceso Content not expressly granted to you in this EULA. The Licensed Software and Aceso Content (and all copies thereof) is licensed to Client, not sold, under this EULA. There are no implied licenses in this EULA. All suggestions or feedback provided by you to Aceso with respect to the Licensed Software shall be Aceso’ property. Aceso may use, copy, modify, publish, or redistribute the submission and its contents for any purpose and in any way without any compensation to you. You also agree that Aceso does not waive any rights to use similar or related ideas previously known to Aceso, developed by its employees, or obtained from other sources.

5. Open Source.

Certain items of software included with the Licensed Software are subject to “open source” or “free software” licenses (“Open Source Software”). Third parties own some of the Open Source Software. The Open Source Software is not subject to the terms and conditions of this EULA. Instead, each item of Open Source Software is licensed under the terms of the end user license that accompanies such Open Source Software. Nothing in this EULA limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Aceso makes such Open Source Software, and Aceso’ modifications to that Open Source Software, available by written request to Aceso at the email or mailing address listed below.

6. Government Rights.

For U.S. Government End Users.

The Licensed Software is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and

more specifically is “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Licensed Software is provided to U.S. Government End Users only as a commercial end item and with only those rights as are granted to all other customers pursuant to the terms and conditions herein.

7. Term and Termination.

This EULA and the license granted hereunder are effective on the date you first use the Licensed Software and shall continue for as long as you pay the associated Software, Maintenance & Support fees listed in the applicable Order Document, unless this EULA is terminated under this section. Aceso may terminate this EULA at any time if you a) fail to pay the associated Software, Maintenance & Support Fees set forth in an Order Document, or b) fail to comply with any term(s) hereof. Upon termination of this EULA, the license granted hereunder will terminate and you must stop all use of the Licensed Software and/or Aceso Content, and shall return to Aceso all copies in Client’s possession; however, the terms of Sections 4 through 12 (inclusive) will remain in effect, after any such termination.

8. Export Compliance.

The Licensed Software and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and regulations and acknowledge that you have the responsibility to obtain authorization to export, re-export, or import the Licensed Software and related technology, as may be required. You will indemnify and hold Aceso harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney’s fees) arising from or relating to any breach by you of your obligations under this section.

EXHIBIT B

Maintenance and Support Agreement

This Maintenance and Support Agreement (“Support Agreement”) is entered into between Aceso Interactive (“Aceso”) and Client (“Client”). This Support Agreement is executed in connection with that certain Master License and Services Agreement executed between the parties (the “Master Terms”). The Master Terms and any Order Documents attached therein are an integral part of this Support Agreement and are incorporated herein by reference. Terms not otherwise expressly defined herein, shall have the meanings ascribed to them in the Master Terms.

1. Support Services. In consideration for the Subscription & Maintenance Fees listed in an Order Document, Aceso agrees to furnish Client the Maintenance Services set forth in Attachment I herein. In consideration for the Content Subscription fees, if any, set forth in an Order Document, Aceso agrees to furnish the Content and Program Management Services set forth in Attachment I herein. For purposes of this Support Agreement, the maintenance services, support services and/or content and program management services shall be collectively referenced as “Services” herein.

2. Term and Termination. This non-cancellable Support Agreement shall commence on the first date the annual operating fees are due, and shall continue for the Initial Term (as set forth in the Master Terms). Thereafter, this Support Agreement may be renewed for additional terms (each a “Renewal Term”) provided agreement is made by the Parties and Client shall paid the annual operating fees, in full.

3. Charges and Payment. Client shall pay to Aceso the annual Maintenance & Support fees set forth in the applicable Order Document. Charges for services other than those specifically provided by this Support Agreement will be billed at Aceso’s then prevailing service rates or such other rates as may be set forth in a separate agreement between Client and Aceso, plus actual out-of-pocket expenses for travel, hotels and meals.

4. Exclusion of Liability. **OTHER THAN AS STATED IN THE MASTER TERMS, ACESO MAKES NO WARRANTY EXPRESS OR IMPLIED AND THERE IS EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ACESO SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS SERVICE AGREEMENT FOR CONSEQUENTIAL, OR EXEMPLARY DAMAGES.**

5. General. Unless otherwise agreed by Aceso, the Services to be provided hereunder do not apply to any part of the equipment, Licensed Software or Aceso Content that (a) has been modified, repaired or serviced by anyone other than Aceso’s staff or certified agent of Aceso, (b) has been subjected to unusual physical

or electrical stress, such as, but not limited to, lightening, accident, neglect, misuse, failure of electrical power, failure of air conditioning or humidity control, or any other cause other than ordinary use, and whether or not such condition is the fault of Client, (c) has been moved from its original Permitted Facility(ies); or where adjustments, correction, repair, replacement, or increase in service time, is caused by: (x) the use of supplies or materials not meeting Aceso's published specifications, (y) the failure of consumable supplies which have reached the end of their useful life, or (z) the use of third party products that are networked, attached or otherwise interfaced with the equipment, Licensed Software or Aceso Content where such networking, attachment, or interface (as applicable) of such third party products have not been approved by Aceso.

Exhibit B/Attachment 1

Maintenance and Support Services Description

Maintenance and Support Services for the Licensed Software and equipment, including non In-Room Equipment purchased through Aceso, the Licensed Content and/or HTV Application shall include the following:

Responsibilities of Aceso.

1. For so long as Client has paid the applicable Maintenance & Support fees set forth in an Order Document, Aceso will provide the following Maintenance & Support Services for the non In-Room Equipment and Licensed Software, as follows:

A. Equipment and Licensed Software.

- i. Telephone Support. Aceso technical support personnel shall be available by telephone 24 hours per day, 7 days per week to assist Client with problems associated with the Licensed Software.
- ii. General. In response to notification from Client, and upon Aceso's determination that the Licensed Software is not operating in accordance with the specifications described in the applicable documentation, Aceso will use reasonable efforts to provide the necessary remedial support services to correct the identified Licensed Software problem(s). Aceso will provide the diagnosis and repair process from a remote location whenever possible. If the source of the identified problem can be demonstrated to be solely the responsibility of Client (i.e. not a defect or malfunction of the Licensed Software) or caused by another component of Client's system or network, Client agrees to compensate Aceso, at Aceso's then prevailing rates, for time and expenses incurred by Aceso in diagnosing such problem. Additionally, Aceso shall have the right to charge for any effort required to provide remedial Support Services resulting from any non-approved Client modifications of the Licensed Software, which were not pre-approved, in writing, by Aceso.
- iii. Aceso Software. Aceso will provide programming services to correct verified errors and issue corrections to the Aceso Software. If Aceso determines that the Aceso Software and/or documentation is in error, and such error does not affect the general functioning of the Aceso Software, Aceso shall ensure a correction to such documentation is made at a reasonable time and in accordance to Aceso's then current product development schedule.
- iv. Remedial Maintenance – Non In-Room Equipment. In the event Aceso determines that any equipment sold to Client through Aceso is not performing in accordance with the specifications described in the product documentation, Aceso will, at its option, repair, replace and/or update the affected equipment component. The Maintenance & Support Services hereunder do not cover

battery cells or other consumable supplies, which have reached the end of their useful life. Aceso agrees to provide telephone support to remotely assist Client in replacing the affected equipment component(s) at a mutually agreed to point in time.

- v. Exclusion. For the avoidance of doubt, In-Room Equipment (e.g. pillow speakers, set top boxes) is not covered as part of Aceso's Maintenance & Support Services. Client is expected to obtain its own supplemental maintenance and/or extended warranty agreement for such In-Room Equipment, or otherwise purchase replacement In-Room Equipment in the event of In-Room Equipment failures. Aceso may assist Client in the facilitation of repair or replacement of such In-Room Equipment at Aceso's sole discretion.
- vi. v. RMA Process. In case of any Non In-Room Equipment failure, Aceso Support needs to be contacted. Aceso Support will determine, using Remote Diagnosis tools and techniques, what FRU "Field Replaceable Unit" or component(s) has/have failed and are in need of repair or replacement.
- vii. Further, Aceso Support will determine the course of action to remedy that situation as quickly as possible. These actions may include replacing the failing component with an on-site spare, or continue operating the system in a redundant backup, or degraded mode (depending on failure and system configuration) to allow time for the replacement component to arrive on site.
- viii. In either case, an RMA Number is issued by Aceso, or Aceso's supplier, with instructions how to tag and return the defective part. Aceso shall use reasonable efforts to ensure a replacement part is shipped and sent within 24 hours, using an appropriate express carrier such as "*Federal Express*". The replacement time may vary depending on Client's location.
- ix. To facilitate the return of material, Aceso may supply Clients with RMA return kits for every hardware shipment. RMA return kits consist of a box for return shipment, packing materials, RMA identification form and a self addressed Federal Express Packing slip for return at Aceso's expense.
- x. vi. Maintenance Releases for the Licensed Software. Aceso will provide Client with engineering changes to correct operational deficiencies and errors to the Licensed Software ("Maintenance Releases") at such time such Maintenance Releases are made available for general release to end-users by Aceso or Aceso's licensor(s). Maintenance Releases shall be installed by Aceso in accordance with Client's approval and at a mutually agreed upon time. After the installation of any Maintenance Release, Aceso shall be relieved of any liability or continued responsibility with respect to any prior Licensed Software release. All Maintenance Releases shall be subject to Aceso's license terms and conditions applicable to the Licensed Software.
- xi. vii. On-Going Utilization Review of the Licensed Software. Aceso will perform bi-monthly utilization reports on the Licensed Software, and schedule a telecom with Client to discuss the results.

- 2. For so long as Client has paid the applicable Licensed Content Operating Fees set forth in an Order Document, Aceso will provide the following Maintenance & Support Services related to such Licensed Content.

A. Licensed Content:

- i. On a quarterly basis, procure, distribute and ingest Licensed Content via the Aceso equipment.
 - ii. Assist Client with issues related to Licensed Content streaming;
 - iii. Provide Client with any newly available video content choices, and incorporate Client's chosen Licensed Content into its streaming playlist.
 - iv. Delete any Licensed Content (from Client's playlist) which is no longer available (by Aceso's Licensors) or desired by Client.
 - v. Assistance with uploading of Licensed Content within the UpCare system at Client's Permitted Facility(ies);
3. For so long as Client has paid the applicable Maintenance and SaaS Fees set forth in an Order Document, Aceso will provide the following Maintenance & Support Services for the HTV Application.

A. HTV Application:

- i. Assist Client with issues related to Comqi menu screen(s);
 - ii. Assist Client with questions related to Client's administrative duties within the HTV Application;
 - iii. Assist Client with modifying system configurations, and with uploading of content and media scheduling;
4. Responsibilities of Client: To ensure Aceso can provide the Maintenance and Support Services set forth above, Client shall have the following responsibilities:

- A. Ensure all Client Content is supplied to Aceso in Aceso's then-current video format specifications (a copy of such video format specifications is available upon request).
- B. Return to Aceso, or Aceso's manufacturer, any equipment component that Aceso has replaced in accordance with Aceso's or its manufacturer's return instructions supplied.
- C. Provide Aceso access to the Licensed Software for any on-site repairs promptly upon Aceso's arrival at Client's site.
- D. Ensure a Client employee is on-site and available to Aceso's service personnel at all times when Aceso's service personnel are on-site.
- E. Assign a single clinical workflow project manager, who shall act as a liaison for Aceso when issues

arise with respect to the features of the Aceso Software.

- F. Provide adequate working space and facilities, including light, heat, ventilation, electric current and outlets, and the like, for use by Aceso service personnel while at Client site, and adequate storage space at Client site if required, for spare parts. All such facilities shall be reasonably close to the Licensed Software to be serviced and shall be provided at no charge to Aceso.
- G. Client shall at all times maintain, for the benefit of Aceso solely for the purpose of performing maintenance, repairs and/or installing Maintenance Releases a high speed VPN tunnel. Client will provide security token(s), as required. All such access shall be for the sole purpose of performing services, maintenance and/or repair services.
- H. Provide Aceso, at no charge, access to and use of any machines, schedules, features, communications facilities or other equipment and materials normally at Client's site which, in the opinion of Aceso's service staff acting reasonably, are necessary to facilitate the performance of the Services described herein. All such access shall be granted for the sole purpose of performing the Services, and any information or data that may be or become available to Aceso as a result of such access shall be used for the sole purpose of performing the Services.
- I. Maintain and control site environmental standards and conditions as required by Aceso.
- J. Not perform, nor attempt to neither perform, nor cause to be performed, maintenance or repair of the Licensed Software, except with the prior written approval of Aceso.

Enhanced Services Description

The following are Enhanced Services offered by Aceso and are not covered as part of Aceso's Maintenance and Support Services. These Enhanced Services are subject to separate charge at Aceso's then-prevailing rates, or such other rates as may be mutually set forth in a separate Order Document.

1. Licensed Software Enhanced Services.
 - a) Provide quarterly utilization review of the Aceso System at the Permitted Facility(ies) to ensure Client is receiving optimized usage of the Aceso System, and collaborating with Client on enhanced features and/or modifications and/or new interfacing desired;
 - b) Provided requested modifications to the workflow and/or menu screens existing within the Aceso System to incorporate Client's changing needs and/or Client's on-going procedures;
 - c) Review of Licensed Content and/or Client Content choices/play-list to determine then-current relevancy and/or assisting Client with updating of Licensed Content and/or Client Content to meet Client's changing requirements;
 - d) Additional training of Client personnel including creating custom staff support/training materials (video, documents);
 - e) Additional guidance on governance, roadmap, clinical strategy, and/or goals;
 - f) Assistance in the creation or acquisition of Client Content.
 - g) If additional Client Content is not available in Aceso's then current video format specifications, Aceso may provide the necessary transcoding services in order such Client Content is ready for streaming on the Aceso System.
2. HTV Application Enhanced Services. a) Program Management Services. Provide off-site administrator services of the HTV Application which can include some or all of the following:

Provide quarterly review of Client's selected Content programming loop-cycle for each Permitted Facility(ies), based upon input from Client personnel;

Provide Content Development services including, but not limited to, template building, creative services and/or screen production;

Provide Content Publishing services including, but not limited to, layout creation, content uploading, program development, timeline creation, EnGage Utility Support, widget configuration and implementation;

Provide daily updates (e.g. menus, events, announcements) within Engage OSM;

System configuration and support (e.g. on/off walls, player provisioning)

Ensure Content programming loop-cycle is properly displayed pursuant to the parties' agreed upon schedule.

b) Meet with Client's HTV Program Manager at mutually agreeable times to review the progress and outcome of previous content programming cycles and associated run-times.

3. Training Services

a) Additional training of Client personnel including creating custom staff support/training materials (video, documents).

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EXHIBIT D

Business Associate Agreement

This Business Associate Agreement (“BA Agreement”) is entered into between Aceso Interactive (“Aceso” or “Business Associate”) and Client (“Client” or “Covered Entity”). This BA Agreement is executed in connection with that certain Master License and Services Agreement executed between the parties (the “Master Terms”). The Master Terms and any Order Documents attached therein are an integral part of this BA Agreement and are incorporated herein by reference. Terms not otherwise expressly defined herein, shall have the meanings ascribed to them in the Master Terms. Throughout this BA Agree

Definitions

General definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By-Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Aceso.
- (b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Client.
- (c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Master Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to Client any use or disclosure of protected health information not provided for by the Master Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(e) Make available protected health information in a designated record set to the Client as necessary to satisfy covered Client's obligations under 45 CFR 164.524;

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Client pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of disclosures to the Client as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(h) To the extent Aceso is to carry out one or more of Client's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

(a) Business associate may only use or disclose protected health information as is necessary to perform the services set forth in the Master Agreement.

(b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.

(e) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.
- (b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.
- (c) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

Permissible Requests by Covered Entity

Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity.

Term and Termination

- (a) Term. The Term of this Agreement shall be effective as of the Effective Date of the Master Agreement, and shall terminate on the date such Master Agreement expires or is terminated, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement [and business associate has not cured the breach or ended the violation within the time specified by covered entity]. [Bracketed language may be added if the covered entity wishes to provide the business associate with an opportunity to cure a violation or breach of the contract before termination for cause.]
- (c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, business associate shall destroy all protected health information received by business associate on behalf of covered entity, that the business associate still maintains in any form. Business associate shall retain no copies of the protected health information.

- (d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

Miscellaneous [Optional]

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.