

# TERMS OF USE AND FHIR API LICENSE AGREEMENT

This *Terms of Use and FHIR API License Agreement* ("Agreement") is made by and between MedInformatix, Inc., a California corporation, and \_\_\_\_\_ ("Developer"), with reference to the MedInformatix API. This Agreement is intended to provide an open application programming interface (API) software platform certified by the Office of the National Coordinator (ONC) for Health Information Technology, for any currently deployed EHR software with a standards-based open API solution.

## 1. DEFINITIONS

Pursuant to requirements set forth by the ONC for electronic health record ("EHR") software to meet in order to be certified EHR, MedInformatix has made available the MedInformatix API to Developer. As used in this Agreement, the following capitalized terms shall have the following meanings:

"MedInformatix SDK" means collectively, (a) any software development kit provided or otherwise made available by MedInformatix and (b) any information in any form shared by MedInformatix or otherwise provided by MedInformatix, including Confidential Information of MedInformatix which Developer uses in connection with the development and testing of Apps, including the MedInformatix Documentation, the Included Code, the Sample Code, and all enhancements, error corrections, or other updates that MedInformatix may provide. MedInformatix API also includes the FHIR API.

"Associated MedInformatix Software" means MedInformatix software with which a Developer App interoperates, including all versions thereof and updates and enhancements.

"Client" means an end user of the FHIR App that has duly licensed the Associated MedInformatix Software from MedInformatix or one of its authorized resellers and has an active support contract with MedInformatix or one of its resellers; and has been granted a license to such FHIR App by Developer in accordance with this Agreement.

"Confidential Information" means any information: that is marked as "Confidential" or "Proprietary", or that, if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential; or which is otherwise deemed to be confidential by the terms of this Agreement. The MedInformatix SDK, the Associated MedInformatix Software and any credentials for accessing any MedInformatix site, server, software or service shall be considered MedInformatix Confidential Information. Notwithstanding the foregoing, Confidential Information shall exclude information that Developer can demonstrate: (a) was independently developed by Developer without any use of MedInformatix Confidential Information or by the Developer's employees or other agents (or independent contractors hired by Developer) who have not been exposed to MedInformatix Confidential Information; (b) becomes known to the Developer, without restriction, from a source other than MedInformatix that had no duty of confidentiality to MedInformatix; (c) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Developer; or (d) was rightfully known to the Developer, without restriction, at the time of disclosure.

“Critical Security Issue” means functionality or behavior that, in MedInformatix reasonable discretion, (a) compromises patient confidentiality or safety or (b) compromises the integrity or accessibility of patient data.

“Developer App” means a software program created using, or with reference to, the MedInformatix SDK, which software program interoperates or exchanges or shares data (bi-directionally or uni-directionally) with any Associated MedInformatix Software.

“EULA” means an end-user license agreement between Developer and a Client that meets the requirements attached hereto as Exhibit A.

“FHIR API” means that portion of the MedInformatix SDK required to implement United States federal QPP and PI regulations and includes functionality related to securely connecting to the EHR using an app, searching for a patient, pulling patients that match certain criteria and pulling discrete data for a specific patient that includes conditions or problems, immunizations, medications, allergies, smoking status, medications ordered for the patient, lab results, vital signs, procedures, care team members, care plan assessments and plan of treatment, laboratory orders and tests, unique device identifiers for implantable devices, health goals, health concerns, and pulling the complete patient record in the form of a C-CDA.

“FHIR APP” means a Developer App that is created using, or with reference to, only that portion of the MedInformatix SDK comprising FHIR API calls.

“Included Code” means software made available to Developer pursuant to the MedInformatix developer program that is plainly identified as being authorized for use in the development of a Developer App.

“Intellectual Property Rights” means all current and future worldwide common law and statutory rights, whether arising under the laws of the United States or any other state, country, jurisdiction, government, or public legal authority, in, to, or associated with (a) patents, patent applications, and invention disclosures; (b) copyrights, copyright registrations and applications therefore, moral rights, and mask work rights; (c) the protection of trade or industrial secrets or confidential information; (d) all other intellectual property rights and proprietary rights; (e) trademarks, servicemarks, and other designations of source or origin; (f) any analogous rights to those set forth above; (g) divisions, continuations, renewals, reissuances, and extensions of the foregoing (as applicable); and (h) rights to apply for, file for, certify, register, record, or perfect any of the foregoing.

“QPP” means the “Quality Payment Program” from the Centers for Medicare & Medicaid Services

“PI” means the “Promoting Interoperability” program from the Centers for Medicare & Medicaid Services.

“SDK Documentation” means data, files, installation and use instructions, and other documentation provided or made available by MedInformatix hereunder.

“Sample Code” means source code made available to Developer pursuant to the MedInformatix Developer Program for use with Web services or other functionality made available via the MedInformatix SDK.

## **2. LICENSES AND RESTRICTIONS**

### **2.1 Limited SDK License.**

(a) Subject to Developer’s compliance with the restrictions set forth in this section, MedInformatix hereby grants to Developer a limited, nonexclusive, nonsublicensable, nontransferable, royalty-free license during the term to use and copy the MedInformatix SDK and to modify the Sample Code and Included Code as necessary (i) to create and test FHIR Apps, (ii) to demonstrate FHIR Apps to potential customers; and (iii) to distribute FHIR Apps pursuant to a EULA.

(b) Developer acknowledges and agrees that (i) MedInformatix may modify the MedInformatix SDK at any time in MedInformatix' sole discretion and (ii) future versions of the MedInformatix SDK may not permit the operation of, or otherwise be compatible with, any Developer App created hereunder.

2.2 No Reverse Engineering. Developer shall not decompile, extract, translate, decrypt, disassemble, or otherwise reverse engineer any portion of the MedInformatix SDK or any Associated MedInformatix Software, or attempt to do any of the foregoing, except to the extent that such activity is expressly permitted by applicable law (despite a contractual prohibition on such activity), in which case Developer shall give MedInformatix a detailed, written notice at least 30 days prior to engaging in such activity that describes the nature and extent of the contemplated activity.

2.3 Developer Contractors. Developer may use third-party independent contractors (“Contractors”) to create FHIR Apps in accordance herewith, provided that such use is pursuant to a written, binding agreement between Contractor and Developer that is at least as protective of MedInformatix’ rights in the MedInformatix SDK, the Associated MedInformatix Software, and MedInformatix’ Confidential Information as this Agreement (such agreement between Contractor and Developer, the “Contractor Agreement”). Developer shall ensure that each Contractor fully complies with its Contractor Agreement, and Developer shall be liable to MedInformatix for any breach by Contractor thereof.

### **2.4 Other Restrictions.**

Developer shall not:

(a) except as expressly licensed herein, (i) use, copy, modify, create derivative works of, display, or distribute any portion of the MedInformatix SDK for any purpose; nor (ii) authorize or permit any third party to do any of the foregoing;

(b) except as expressly permitted by Section 2.1(a), license or distribute any Developer App to any third party or authorize or permit any third party to do the same;

(c) permit any lien, security interest or other encumbrance to attach to the MedInformatix SDK or any portion thereof;

(d) remove, alter, add, or obscure any intellectual property or other proprietary notice or other notice included in the MedInformatix SDK;

(e) except as expressly permitted by Section 2.1(a), use any portion of the MedInformatix SDK to provide, or to assist in or further the provision of, any data processing, outsourcing, time sharing, or service bureau services, or any other services for the benefit of any third party;

(f) use any portion of the MedInformatix SDK or any Developer App for any unlawful or illegal activity;

(g) use any portion of the MedInformatix SDK or any Developer App to disrupt, damage, interfere with or access in an unauthorized manner any server, network or other property or service of any person or entity;

(h) install or use any portion of the MedInformatix SDK on equipment located in, transmit or otherwise distribute any portion of the MedInformatix SDK to, or access any portion of the MedInformatix SDK from any country other than those countries that are parties to the Berne Convention for the Protection of Literary and Artistic Works; or

(i) use the MedInformatix SDK, any Developer App or any MedInformatix Confidential Information to benchmark or monitor the availability, performance or functionality of the MedInformatix SDK or any Associated MedInformatix Software.

**2.5 MedInformatix Ownership.** The MedInformatix SDK is licensed, not sold, to Developer. Developer acknowledges and agrees that, as between the Parties, MedInformatix is the sole owner of all right, title, and interest in and to the MedInformatix SDK, the Associated MedInformatix Software and MedInformatix Confidential Information, including all Intellectual Property Rights therein and thereto. No rights or licenses are granted by MedInformatix other than those rights expressly granted in this Agreement, and MedInformatix reserves all rights not expressly granted. Developer shall immediately notify MedInformatix of any known unauthorized access or use of any portion of the MedInformatix SDK, MedInformatix' Confidential Information or the Associated MedInformatix Software. Developer shall cooperate with MedInformatix' reasonable efforts to protect its intellectual property and other rights in and to the MedInformatix SDK, MedInformatix' Confidential Information and the Associated MedInformatix Software. MedInformatix shall have, and Developer hereby grants to MedInformatix, a nonexclusive, worldwide, irrevocable, perpetual, royalty-free, transferable and

sublicensable license to use in any manner and for any purpose any feedback, suggestions, recommendations, or information (collectively, “Feedback”) provided by Developer.

### **3. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY**

THE MEDINFORMATIX SDK, ASSOCIATED MEDINFORMATIX SOFTWARE, AND FHIR API ARE PROVIDED ON AN “AS IS” BASIS AND WITHOUT ANY WARRANTY WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, MEDINFORMATIX AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES, INFORMATION PROVIDERS AND SUPPLIERS DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT.

IN NO EVENT WILL MEDINFORMATIX BE LIABLE TO DEVELOPER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, ENHANCED OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF USE, DATA OR PROFITS HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR MEDINFORMATIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DEVELOPER'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE MEDINFORMATIX SDK, ASSOCIATED MEDINFORMATIX SOFTWARE, AND FHIR API. NOTWITHSTANDING THE FOREGOING PARAGRAPH, THE TOTAL LIABILITY OF MEDINFORMATIX, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES, INFORMATION PROVIDERS AND/OR SUPPLIERS, IF ANY, FOR LOSSES OR DAMAGES SHALL NOT EXCEED THE FEES PAID BY DEVELOPER FOR THE USE OF THE PARTICULAR TECHNOLOGY, SOFTWARE, PRODUCT, INFORMATION OR SERVICE PROVIDED BY MEDINFORMATIX .

THESE LIMITATIONS WILL SURVIVE AND APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

### **4. REPRESENTATIONS AND RESPONSIBILITIES**

- (a) Virus Warranty. Developer warrants that the Developer App will not contain any viruses or other malicious computer instructions, devices, or techniques that can or were designed to threaten, infect, damage, disable, or shut down the MEDINFORMATIX EHR APIs, any technology, software, solution, equipment or any computer system.
- (b) Security and Privacy. To countermeasure the risks of security and privacy breaches, Developer agrees to comply with all requirements in MedInformatix FHIR API documentation

## 5. INDEMNITY

Developer shall defend, indemnify, and hold MedInformatix, its officers, directors, employees, agents, affiliates and information providers harmless from and against all losses, cost, liability, damage and expenses (including attorneys' fees) arising out of or in connection with (a) any breach by Developer of this Agreement; (b) any use by Developer of the MedInformatix SDK, FHIR APP, Confidential Information, including any infringement by any Developer App of any third-party Intellectual Property Rights; or (c) any damage caused to any IT environment by Developer or any Developer App.

## 6. CONFIDENTIALITY

6.1 Protected Health Information. Developer shall not submit or make available to MedInformatix any Protected Health Information (as defined under Health Insurance Portability and Accountability Act of 1996 (as amended) ).

6.2 Confidentiality Obligations. Developer shall treat as confidential all of MedInformatix's Confidential Information and shall not disclose the same to any third party or use the same except as expressly permitted under this Agreement. Without limiting the foregoing, Developer shall use at least the same degree of care which it uses to prevent the disclosure of its own most confidential information, but in no event with less than reasonable care, to prevent the disclosure of MedInformatix's Confidential Information.

6.3 Compelled Disclosure. If MedInformatix's Confidential Information must be disclosed by Developer pursuant to the order or requirement of a court, administrative agency, or other governmental body, Developer shall (a) provide prompt notice thereof to MedInformatix and (b) use its best efforts to obtain a protective order or otherwise prevent public disclosure of such information.

6.4 Remedies. Unauthorized use of MedInformatix' Confidential Information will diminish the value of such information. Therefore, if Developer breaches any of its obligations with respect to confidentiality or use of MedInformatix's Confidential Information hereunder, MedInformatix shall be entitled to seek equitable relief in a court of competent jurisdiction in addition to the dispute resolution procedure set forth in Exhibit B in order to protect its interest therein, including but not limited to injunctive relief.

## 7. TERM AND TERMINATION

7.1 Term. This Agreement shall commence on the date last signed by the Parties and continue until terminated in accordance herewith (such time period, the "Term").

7.2 Termination for Critical Security Issue. In the event that MedInformatix reasonably believes that a Critical Security Issue exists with respect to any FHIR App that has been distributed by Developer, MedInformatix may provide Developer with written notice (a "CSI Notice") thereof. Following Developer's receipt of any CSI Notice:

(a) Developer shall diligently work to remedy the Critical Security Issue;

(b) MedInformatix may notify end users of Associated MedInformatix Software that MedInformatix believes it has identified a Critical Security Issue and Developer is working to remedy the same;

(c) MedInformatix may disable the operation of the relevant FHIR App until the Critical Security Issue is remedied to MedInformatix' reasonable satisfaction; and

(d) If the Critical Security Issue is not remedied to MedInformatix' reasonable satisfaction within 30 days of MedInformatix' issuance of the CSI Notice, MedInformatix may terminate this Agreement upon written notice to Developer.

7.3 Termination for Breach. Either Party may at any time terminate this Agreement upon written notice to the other Party in case of such other Party's material breach hereof; provided that, in the case that Developer has then distributed FHIR Apps to Clients in accordance herewith, this Agreement may only be terminated by MedInformatix upon written notice to Developer if Developer's material breach remains uncured for 30 days following MedInformatix' written notice of such breach; and provided further that if, during such 30-day period, Developer provides MedInformatix with written notice of (i) the identities of Clients to whom FHIR Apps have been distributed hereunder and (ii) the respective term of each such Client's FHIR App license agreement, then this Agreement shall not terminate with respect to Developer's support and maintenance services for each such Client until the expiration of the relevant term.

7.4 Termination for Convenience. Developer may terminate this Agreement for any reason or no reason, which termination shall be effective 15 days after delivery of notice to MedInformatix of such termination.

7.5 Effect of Termination. Immediately upon any termination of this Agreement, Developer shall cease all access to and use of the MedInformatix SDK and all MedInformatix Confidential Information, and either return to MedInformatix or destroy all materials constituting or including the same, and any and all copies and portions of the foregoing (and certify in writing any such destruction to MedInformatix, upon request). Termination of this Agreement will not limit any of MedInformatix' rights or remedies against Developer at law or equity. MedInformatix shall have no liability to Developer as a result of any termination of this Agreement that is made in accordance with its terms.

7.6 Survival. The provisions of Sections 2, 3, 4, 5 and 6 of this Agreement shall survive any termination of this Agreement.

## **8. GENERAL PROVISIONS**

8.1 Governing Law, Jurisdiction and Dispute Resolution. This Agreement will be governed by, construed and enforced in accordance with the laws of the state of California, without reference to conflict of laws principles. Any disputes arising out of this Agreement will be resolved through the dispute resolution procedure set forth in Exhibit B to this Agreement.

8.2 Compliance with Applicable Laws. Developer shall strictly comply with all applicable laws, regulations and governmental orders in the exercise of its rights and the performance of its

obligations under this Agreement. Such laws and regulations include but are not limited to the Health Information Portability and Accountability Act (HIPAA) and its implementing regulations, and the Federal Trade Commission (FTC) Act .

8.3 Publicity. Developer shall not issue any press release or publicity regarding this Agreement or its relationship with MedInformatix hereunder, or otherwise use in advertising, publicity or otherwise the name or any trademark or servicemark of MedInformatix or any affiliate of MedInformatix, without obtaining the prior written consent of MedInformatix.

8.4 Binding Effect. This Agreement will be binding upon and inure to the benefit of the Parties hereto, their successors, and permitted assigns.

8.5 Amendments. No modification of, or amendment to, this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by an authorized representative of both Parties.

8.6

8.7 Partial Invalidity. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect, and the Parties shall negotiate in good faith a substitute, valid, and enforceable provision that most nearly reflects the Parties' intent in entering into this Agreement.

8.8 No Waiver. No waiver of any term or condition of this Agreement will be valid or binding on either Party unless the same will have been mutually assented to in writing by an officer of both Parties. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either Party to enforce each and every such provision thereafter.

8.9 Data Collection. Developer acknowledges and agrees that MedInformatix may collect and use for any purpose data arising from Developer's use of the MedInformatix SDK, including usage statistics, unique identifiers, associated IP addresses, version numbers of relevant software, and information on which tools and services in the MedInformatix SDK are being used and how they are being used.

8.10 Construction. The titles and section headings used in this Agreement are for ease of reference only and shall not be used in the interpretation or construction of this Agreement. No rule of construction resolving any ambiguity in favor of the non-drafting Party shall be applied hereto. The word "including", when used in this Agreement, is illustrative rather than exclusive and means "including, without limitation." References herein to "Sections" and "Articles" refer to the sections and articles of this Agreement.

8.11 Entire Agreement. This Agreement and its Exhibits, which are incorporated herein by reference, sets forth the entire agreement and understanding of the Parties relating to the subject matter herein and supersedes all prior and contemporaneous communications, representations, discussions, and agreements between the Parties with respect to such subject matter.



8.12 Assignment. Developer may not and shall not assign or delegate this Agreement or any of its licenses, rights, or duties under this Agreement without the prior written consent of MedInformatix, by operation of law or otherwise, and any purported assignment shall be void and of no force or effect. A change in control shall be considered an assignment for the purposes of this Section. MedInformatix may freely assign or delegate this Agreement or any of its licenses, rights, or duties hereunder in its' sole discretion.

8.13 Notices. Any notice or other communication required or permitted to be delivered hereunder must be in writing and sent by reasonable means to the address of the recipient first written above. In the case of notices sent to MedInformatix, such notices must be conspicuously addressed to the attention of the "MedInformatix Developer Program." Such notice will be deemed to have been given when delivered.

8.14 Federal Government License.

(a) This Section only applies when Developer is the United States government or an agency thereof.

(b) Portions of the software and other materials licensed hereunder were developed at private expense and constitute and/or embody trade secrets or published copyrighted software. By accepting delivery of the software, the government hereby agrees that this software and the related documentation are "Commercial Items", as that term is defined at 48 C.F.R. 2.101, consisting of " Commercial Computer Software" and " Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227-7202-1 through 227-7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (i) only as Commercial Items and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein, as provided in DFARS 227-7202-1(a) and 227-7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (Oct. 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14 (Alt III), as applicable. The terms and conditions of this Agreement shall pertain to the government's use and disclosure of the software, and shall supersede any conflicting contractual terms or conditions. If this Agreement fails to meet the government's minimum needs or is inconsistent in any respect with federal procurement law, the government agrees to make no use of the MedInformatix software or other materials. The foregoing provision shall be deemed updated as necessary to reference successor provisions

Date: \_\_\_\_\_  
Developer

Date: \_\_\_\_\_  
MedInformatix, Inc.

BY \_\_\_\_\_

BY: \_\_\_\_\_

## EXHIBIT A

### End-User License Agreement Requirements

Each agreement Developer enters with a Client pursuant to which Developer distributes or provides to the Client, or authorizes the Client to access or use, a FHIR App must include binding provisions that incorporate and are fully consistent and comply with the terms set forth in these End-User License Agreement Requirements. Except as expressly provided below, Developer's agreement with each Client must use the definitions provided in this Agreement for the capitalized terms set forth below. The agreement between Developer and Client shall not conflict with or modify (or be construed or interpreted to conflict with or modify): (a) Client's license to the Associated MedInformatix Software under Client's applicable agreement with MedInformatix or the applicable MedInformatix affiliate or reseller, including any of the license's prohibitions, restrictions, or limitations; or (b) this Agreement.

1. **Definitions.** Capitalized terms used in this Exhibit and not defined herein shall have the meanings therefore set forth in the body of the Agreement.
2. **Supported Client Status.** Client represents and warrants that it is (and at all times during the period of use of the FHIR App shall remain) a Client (as defined in the Agreement).
3. **Client License.** The FHIR App may only be used in conjunction with the Associated MedInformatix Software. Client shall ensure that each of its authorized users fully complies with its end-user license agreement to the fullest extent they apply to Client. Client may not assign Client's agreement with Developer to a third party except to the extent Client is permitted to assign Client's applicable agreement with MedInformatix or the applicable MedInformatix reseller.
4. **Client Review.** As among Client, MedInformatix and Developer, Client is responsible for all decisions, acts, and omissions of any persons in connection with the delivery of medical care or other services to any patients. Before any FHIR App is placed into a live production environment, it is Client's responsibility to review and test the FHIR App (in conjunction with the Associated MedInformatix Software and all other associated materials, workflows, and other content), as implemented, make independent decisions about system settings and configuration based upon Client's needs, practices, standards and environment, and reach its own independent determination that the FHIR App is appropriate for such live production use. Any such use by Client (or its authorized users) will constitute Client's representation that it has complied with the foregoing. FHIR Apps designed for clinical use ("Clinical Apps") are tools to assist Client and authorized users in the delivery of medical care, but should not be viewed as prescriptive or authoritative. Clinical Apps are not a substitute for, and Client shall ensure that each authorized user applies in conjunction with the use thereof, independent professional medical judgment. Clinical Apps are not designed for use, and Client shall not use them, in any system that provides medical care without the participation of properly trained personnel. Any live production use of Clinical Apps by Client (or its authorized users) will constitute Client's acceptance of clinical responsibility for the use of such Clinical Apps.

5. **No MedInformatix Approval.** Client acknowledges and agrees that MedInformatix has not tested or determined that the FHIR App will interoperate with any particular release of the Associated MedInformatix Software or with Client's computing environment and infrastructure.

6. **No MedInformatix Liability.** Client, for itself and each of its authorized users, acknowledges that MedInformatix is not a party to the agreement between Developer and Client (but is a third-party beneficiary as provided in these terms); that Developer, and not MedInformatix, is solely responsible for the FHIR App, the content thereof, and any other products and services Developer provides or performs with respect to the FHIR App; and that MedInformatix has no liability whatsoever with respect to the FHIR App or any other products provided or services performed by Developer. MedInformatix provides Client no representations, warranties, or promises with respect to any FHIR App and nothing in these terms (or elsewhere in the associated agreement(s) between Developer and Client) and nothing else shall create (expressly or by implication or otherwise) any of the foregoing. With respect to each FHIR App, Developer is solely responsible for (a) complying with all express warranties, (b) complying with all implied warranties, to the extent not expressly and effectively disclaimed, and (c) providing any and all contracted support services and correcting and addressing any and all defects and all other problems or issues. Client agrees not to seek to hold MedInformatix (or any of its affiliates) liable for any problems or issues with the development, implementation, use or any other aspect of any FHIR App or any damages caused by any of the foregoing. Any and all stated limitations of liability shall comply with applicable law.

7. **Client Feedback.** No provisions shall prohibit, restrict or limit any Client (or any of its users) from providing to MedInformatix any reviews, concerns, or other feedback regarding any FHIR App.

8. **Client Rights Upon Termination.** Client's license to the FHIR App will terminate immediately if Client is no longer a client of MedInformatix or in the event MedInformatix or Developer terminates their Agreement. Except with respect to a proper and authorized termination of the Client's license to the FHIR App due to a material breach of that license by the Client, notwithstanding any expiration or termination of the agreement between Client and Developer governing Client's use of the FHIR App, expiration or termination of Client's license to or support for the FHIR App, or anything else, Client shall have the irrevocable right to continue to copy, modify, and otherwise use (consistent with its originally granted license rights to the FHIR App and content): (a) any and all content the Client originally obtained from use of the FHIR App that is then-used in connection with or stored in repositories for the Associated MedInformatix Software or is then-contained in any patient medical records or other patient records, all as maintained or used by or on behalf of Client; and (b) the FHIR App (and its associated user documentation) to the extent its use is reasonably required for viewing, storing, modifying or using any such content. Notwithstanding anything else, Client acknowledges and agrees that, under certain circumstances, MedInformatix may terminate its agreement with Developer regarding the subject FHIR App(s) and that, such termination may require Developer to terminate the license or the support and maintenance services contracted hereunder for such FHIR App(s).

9. **MedInformatix as Third-Party Beneficiary.** MedInformatix is expressly designated and made third-party beneficiaries of Developer’s agreement with the Client, and have the right (and will be deemed to have accepted the right) to enforce the agreement against the Client as a third-party beneficiary.

## **EXHIBIT B**

### **DISPUTE RESOLUTION**

1. The parties agree that all disputes arising between the parties concerning the terms of this Agreement (a "Dispute") shall be resolved as set forth in this Exhibit "B." The parties hereby knowingly and voluntarily waive their right to submit any Dispute, at any time and for any reason and for any relief, to any federal or state court, agency, or administrative tribunal, except as specified in this Exhibit "B." A Dispute shall be deemed to include any issue or question regarding whether such Dispute is subject to resolution as provided in this Exhibit "B."

2. As the first step in the dispute resolution process for any Dispute, the parties agree to negotiate in good faith in an attempt to achieve a resolution of a Dispute. Within 10 calendar days of the written notice by one party to the other of a Dispute that has not been informally resolved, a representative of each party, who has not previously been involved in the issue or interaction giving rise to the Dispute and who has full settlement authority, will confer with each other and attempt to resolve the Dispute. If the Dispute has not been resolved within 10 calendar days of the date on which the representatives of each party first conferred, and unless the parties agree to extend the 10-day period, either party may submit the Dispute to non-binding mediation. Submission to and following the procedures set forth in Paragraph 3 of this Exhibit "B" regarding mediation shall be a prerequisite to pursuing arbitration as set forth in Paragraph 4 of this Exhibit "B."

3. If the Dispute is submitted to non-binding mediation, said mediation shall be conducted by a mediator jointly selected by the parties. The mediation shall be conducted as soon as practicable after submission, but in no event later than 30 calendar days, unless both parties agree otherwise. The parties will share equally the costs of the mediator and each party will be solely responsible for its own expenses relating to the mediation. If the dispute has not been settled within 10 calendar days of the date of the first mediation conference, and unless the parties agree to extend the 10-day period, either party may submit the dispute to final and binding arbitration.

4. Any Dispute not resolved through good faith negotiations or mediation shall be resolved by final and binding arbitration before a single arbitrator chosen from the panel at ADR Services in Los Angeles, California. If the parties cannot agree on an arbitrator, then an arbitrator shall be chosen at random by ADR Services from its list of retired judges. Limited discovery shall be permitted.