

MGMA DataDive Agreement 2018

Effective Date: _____ FTE Physician Count: 95
 Company Name: Natividad Medical Center Group ID: 378253
 Billing Address: _____
 City: _____ State: _____ Zip: _____

Main Logistics Contact Information

(List the individual that should receive all communications & invoices regarding your order)

Contact Name: _____ Title: _____
 Email: _____ Phone: _____

Accounting contact information

Accounts Payable Phone: _____
 Accounts Payable Email: _____

Yes I am Tax Exempt

If you indicate you are a tax-exempt entity, we need a copy of your tax-exempt form on file. **Please include your tax exempt form with this agreement.** Any group without a tax-exempt form on file will be charged tax after February 20, 2018.

LICENSEE UNDERSTANDS AND AGREES THAT THIS ORDER FORM, THE AGREEMENT AND MGMA'S TERMS OF USE ARE ALL LEGALLY BINDING

Licensee desires to access and license data from MGMA. This Agreement Form reflects some of the basic terms and conditions under which MGMA is willing to provide such data. In addition to the terms set forth below, Licensee understands and agrees that it is also legally bound by all of the terms and conditions of MGMA's Data and Data Analysis License Agreement ("Agreement"). It is Licensee's responsibility to read, understand and abide by all of the terms of the Agreement. Licensee also agrees to abide by any MGMA policies relating to access to and use of MGMA's DataDive web site and services.

Product	Price
2018 MGMA DataDive All Surveys – Year 1	\$7,200
2019 MGMA DataDive All Surveys – Year 2 (Invoice in August 2019)	\$7,560
2020 MGMA DataDive All Surveys – Year 3 (Invoice August 2020)	\$7,938
Total Before Tax – Year 1 Due Upon Invoice	\$7,200

In addition to the information provided and/or selected above, Licensee agrees to provide MGMA with any information reasonably requested by MGMA so that MGMA can deliver the products and services ordered.

Termination: This Agreement will commence as of the Effective Date. Any party may terminate the Entire Agreement if (i) another party breaches a material term of this Agreement, and (ii) such breach is not cured within thirty (30) days after notice of the breach is issued to the breaching party; or (iii) the Terms of Use are violated by Licensee, and Licensee does not cure such violation as set forth in the Terms of Use.

If the Licensee has received a discount on product for committing to participate in the current survey cycle, then Licensee agrees to provide complete and accurate data for the entire practice or system. If the survey participation is not complete, the licensee agrees to pay back the discounted portion of the invoice.

The price listed on this agreement is valid for 90 days from the day it was sent.

PAYMENT IS DUE UPON RECEIPT OF INVOICE

Name: _____
Title: _____
Signature: _____
Date: _____

MGMA
Name: Todd Evenson, MBA
Title: Chief Operating Officer
Signature: _____
Date: _____

AB
ABrington
Dep COO
3.4.19

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey
3-5-19

Last Updated: May 2018

DATA LICENSE AGREEMENT

THIS IS A LEGALLY BINDING AGREEMENT. BY CLICKING THE "ACCEPT" BUTTON OR BY ACCESSING OR USING ANY PART OF THE DATA, YOU EXPRESSLY AGREE TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT

This Data License Agreement ("**Agreement**") contains the terms upon which **MGMA-ACMPE**, a Colorado nonprofit corporation ("**MGMA**") agrees to provide you and/or your company, as applicable, ("**Licensee**" or "**You**") with access to, use of and analysis of MGMA's proprietary data and materials ("**Data**"), and is effective as of the date Licensee accesses any Data, or signs any applicable order form or other contract that gives Licensee the right to access any Data, whichever comes first ("**Effective Date**") .

YOU ONLY HAVE THE RIGHTS TO ACCESS AND USE THE DATA THAT ARE EXPRESSLY GRANTED IN THIS AGREEMENT.

1. **Data.** MGMA owns and/or manages (either itself or through its third party contractors) the Data, which includes, without limitation, proprietary data, content and other information and materials, statistical tables, reports, summaries, research findings, aggregations, calculations, data, data analysis, and formulas, and all other information and materials accessible through MGMA, whether digital or hard copy.
2. **Proprietary Nature of the Data.** You acknowledge that MGMA invests considerable time and resources in gathering, analyzing, creating, organizing, arranging, selecting, correlating, compiling and developing its Data and that the Data is highly valuable to MGMA and MGMA takes great steps to protect its Data. MGMA provides access to its Data only to individuals and companies who specifically agree to maintain the confidentiality of the Data and to limit their disclosure and use of the Data as provided for herein. MGMA's Data may not be used by any individual or company without first obtaining a license from MGMA.
3. **Purpose.** The purpose of this Agreement is to protect MGMA's Data and the underlying intellectual property rights. Licensee expressly acknowledges and agrees that MGMA's Data is owned by and valuable to MGMA and is subject to all the restrictions of this Agreement. **By clicking on "Accept" and/or by accessing MGMA Data, Licensee expressly agrees to the specific limitations on use of the Data and to protect MGMA's Data from unauthorized disclosure and use.**
4. **License.** Subject to Licensee's strict compliance with the terms of this Agreement and any related Order Form, MGMA grants Licensee a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to use the Data.
5. **Marking / Attribution.** If Licensee provides any portion of the Data to any of its officers, employees or clients, it must clearly and conspicuously mark the Data or reports with the following notices:
 - a. the Data is proprietary and is owned by MGMA;
 - b. the employee/officer/client may not publish the Data, create any tools with the Data or use the Data in any other manner without first obtaining MGMA's prior written permission.
Failure to provide such notices will constitute a material breach of this Agreement.
6. **Ways to Obtain Access to MGMA Data.** MGMA provides Data to Licensees in many formats, including (without limitation) through the following product offerings:
 - a. Organizational Membership License. Healthcare provider organizations may purchase MGMA's most comprehensive license to use DataDive: the "**Membership and Data Pass**" or the "**All Access**

Pass". Under this license, the organization may access and use any of the Data found within the DataDive during the term specified in the license. All staff within that organization may access and use any of the Data through DataDive during the term of the license. There is no limitation of Data access during the term of the organizational membership contract. The term of the Organizational Membership License will be set forth in that agreement and upon termination/expiry of the Organizational Membership License, the organization's right to access and use the Data obtained through the DataDive product will terminate. If the license does not specify a term, the default term is twelve (12) months. A Membership and Data Pass or All Access Pass does **not** include the right to create or distribute Derivative Works. A license to create and distribute derivative tools (the "Derivative Works License") is available. For more information, please contact MGMA.

- b. Data Licenses. The **Data License** has the same access rights as the Organizational Membership License. The primary differences between the licenses are: (i) the Data License is available to non-healthcare provider organizations; and (ii) unless a different term is expressly stated in a written agreement signed by MGMA, the Data License has a three-year term; the Organizational Membership term is typically twelve months. Under a Data License, the organization may access the DataDive product and may access and use any of the Data found within the DataDive during the term. All employed staff of Licensee's organization may access and use the specific Data the organization has licensed from MGMA through the Data License. Unless another term is specifically identified in the Data License, the term of the Data License is three (3) years. Upon termination / expiry of the Data License, the organization's right to access and use the Data obtained through the Data License will terminate. The Data License does **not** include the right to create or distribute Derivative Works. A license to create and distribute derivative tools (the "Derivative Works License") is available. For more information, please contact MGMA.
- c. Standard Licenses. Small clinical healthcare providers with 6 or fewer physicians may purchase "**Standard Licenses**" to use printed reports. **The Standard License is only available for printed reports. The Standard License option is not available for DataDive.**
- d. NOTE: MEDICAL SCHOOLS, INTEGRATED HEALTHCARE SYSTEMS, HOSPITALS, AND HEALTHCARE PROVIDERS WITH MULTIPLE TAX IDENTIFICATION NUMBERS MUST PURCHASE AN ORGANIZATIONAL MEMBERSHIP OR DATA LICENSE TO ACCESS DATADIVE.
- e. Participant Access Licenses: Participant Access Licenses allow consultants to access DataDive and particular Data licensed by the healthcare provider organization for the purpose of providing services to the healthcare provider organization. The consultant or licensee may not use the DataDive product or Data for any other purpose unless the appropriate license(s) is obtained. A license to create and distribute derivative tools (the "**Derivative Works License**") is available. For more information, please contact MGMA.
- f. Custom Services. Organizations and individuals may request custom research and analysis services from MGMA, whereby MGMA will research particular areas, provide data compilation and analysis services, and provide custom Data and content to Licensees ("**Custom Services**"). The term of any Custom Services Agreement will be set forth in the agreement for the Custom Services, and if no term is specified, the default term is three (3) years.

- 7. **Registration.** To obtain access to Data through MGMA's DataDive service, Licensee must register with MGMA and must adhere to all of MGMA's policies and terms of use relating to the DataDive. Such registration contains terms and conditions which are incorporated into this Agreement by reference.

8. **Order Form.** MGMA may also require Licensees to submit an order form prior to obtaining certain Data and Data licenses ("**Order Form**"), which upon signature are incorporated into this Agreement by reference and further defines rights and limitations of use of the Data. Such Order Forms may: (a) specifically define the Data licensed; (b) further limit the purpose for use of the Data; (c) limit the number of users who may access the Data; (d) describe any custom services MGMA will provide; and (e) identify specific fee and payment terms.
9. **Restrictions on Use.** All rights not expressly granted to Licensee by MGMA in this Agreement are fully reserved by MGMA, including all statutory and common law rights. Without limiting the foregoing, in addition to Licensee's other obligations set forth elsewhere in this Agreement, Licensee agrees to the following restrictions:
 - a. Licensee will protect the confidentiality of the Data and passwords both within and outside of Licensee's organization.
 - i. If Licensee is a consultant with a MGMA DataDive License, it may provide the minimum necessary amount of the Data to illustrate the consultant's conclusions in reports and analysis in individual client engagements. The grant does not permit Licensee to copy entire Data reports or materials and provide them to its clients. If Licensee has any questions as to the amount of materials that can be used or if a significant portion of the materials will be used, Licensee should contact MGMA for prior approval.
 - ii. Licensee must appropriately cite the data source, using correct year and dataset:
 1. Source: 2018 MGMA DataDive Cost and Revenue. Used with permission from MGMA, 104 Inverness Terrace East, Englewood, Colorado 80112. 877.275.6462. www.mgma.com. © 2018.
 2. Source: 2018 MGMA DataDive Provider Compensation. Used with permission from MGMA, 104 Inverness Terrace East, Englewood, Colorado 80112. 877.275.6462. www.mgma.com. © 2018.
 3. Source: 2018 MGMA DataDive Management and Staff Compensation. Used with permission from MGMA, 104 Inverness Terrace East, Englewood, Colorado 80112. 877.275.6462. www.mgma.com. © 2018.
 4. Source: 2018 MGMA DataDive Practice Operations. Used with permission from MGMA, 104 Inverness Terrace East, Englewood, Colorado 80112. 877.275.6462. www.mgma.com. © 2018.
 - b. Licensee will not share its passwords to DataDive with any other person or entity (including any of Licensee's clients if Licensee is a consultant).
 - c. Licensee will not publicly display or disclose the Data.
 - d. Licensee will not use the Data in any commercialized products or tools unless Licensee purchases a Derivative Works License. For example, Licensee may not use Data in any algorithms or programs to provide commercial products or services to others, even if the Data is combined with other data sources. Such use is directly competitive to MGMA and is prohibited unless Licensee obtains a Derivative Works License from MGMA.
 - e. Licensee will not use the Data in any way that is adverse to MGMA's proprietary rights in the Data or to compete with MGMA.
 - f. Licensee will not use the Data for any purpose other than expressly allowed in this Agreement.

- g. Licensee will not attempt to re-identify any of the Data or contact any subject or associated medical practice group whose information may be contained within Data.
 - h. Licensee will not use the Data for any unlawful purpose or otherwise exploit, in any form or manner whatsoever, all or any portion of the Data or DataDive.
 - i. Licensee will not permit, assist, or encourage (directly or indirectly) any third party to do any of the above acts.
10. **Users.** Where this Agreement references Licensee, it shall be construed as including Licensee and each of its employee users of the Data (if applicable) ("**Users**") such that all obligations of Licensee shall be equally binding upon and enforceable against its Users. Licensee shall be responsible and liable for all acts and omissions of its Users in connection with their use of Data and their compliance with this Agreement and applicable law. Licensee may not authorize any other parties, whether contractors, clients, or agents who are not direct employees of Licensee to access Data as a User under Licensee's account. Licensee will be responsible for the actions of all individuals and entities that use Data or the DataDive through Licensee (directly or indirectly).
11. **Accessibility.** Licensee agrees that from time to time DataDive and Data contained therein may be inaccessible, unavailable or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which MGMA may undertake from time to time; (iii) failure of telecommunications or internet connectivity; (iv) acts of third parties; (v) causes beyond the control of MGMA or (vi) events that are not reasonably foreseeable by MGMA.
12. **De-identification of Data.** MGMA takes steps to de-identify the Data it provides under this Agreement. As used herein, "**De-identify**" means that all personally identifiable information relating to the Data (such as survey responses), including (without limitation) names, addresses, phone numbers, e-mail addresses and company names are removed from the Data. Further, MGMA does not intentionally include any Protected Health Information ("**PHI**") as defined by the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") in any Data provided under this Agreement. If Licensee finds that personally identifiable information or PHI has been inadvertently included in the Data, Licensee and its Users shall immediately cease use of and access to such information. Licensee shall immediately notify MGMA of the same and shall destroy the personally identifiable information and PHI as directed by MGMA.
13. **Equipment & Connectivity.** Licensee shall be solely responsible for providing, maintaining and ensuring compatibility with DataDive, all hardware, software, electrical and other physical requirements for Licensee's use of DataDive and Data including, without limitation, telecommunications and internet access connections and links, web browsers, software or any other equipment, programs and services required to access and use DataDive and Data.
14. **Security.** Licensee shall be solely responsible for any authorized or unauthorized access to Licensee's account by any person whether Users or otherwise. Licensee agrees to bear all responsibility for the confidentiality of Licensee's and its Users' passwords and all uses, charges, costs, expenses, damages, claims and liabilities incurred from use of DataDive with Licensee's and its Users' passwords or accounts.
15. **Confidentiality.** Licensee agrees to treat as confidential and will not disclose to any third party without MGMA's written permission all MGMA Confidential Information. For purposes of this Agreement, "**Confidential Information**" includes: (a) the terms of this Agreement, (b) the terms of the Purchase Order,

(c) the contents of DataDive, (d) all Data, and (c) all other confidential and/or proprietary information of MGMA. Only those employees of Licensee who are designated by Licensee as authorized Users and who have a need to access Data and/or DataDive in order to carry out Licensee's Internal Business Purpose may access DataDive and the Data. However, prior to any such use, Licensee will ensure that all Users have executed some acknowledgment with Licensee containing terms as restrictive as those set forth herein with regard to maintaining the confidentiality and use limitations of the Confidential Information. Notwithstanding the foregoing, if Licensee becomes legally required to disclose any Confidential Information (by interrogatories, requests for information or documents, subpoena, or other legal process), Licensee may reveal such information provided that Licensee provides MGMA with prior written notice of such required disclosure so that MGMA may seek a protective order or other remedies or assurances. Licensee shall cooperate with MGMA with any efforts to obtain appropriate protective measures or other remedies or assurances with respect to such Confidential Information.

16. **Custom Services.** THIS PROVISION APPLIES ONLY IF LICENSEE ORDERS CUSTOM RESEARCH AND ANALYSIS SERVICES AND DATA FROM MGMA IN WRITING: If Licensee orders Custom services from MGMA with the intention of using or publishing the summary data and findings ("**Findings**"), the following terms and conditions apply:

- a. Development. MGMA and Licensee will jointly analyze the applicable Data and create the Findings. The parties will agree to the individuals who will engage in the analysis and development of any Findings. Licensee agrees to include only summaries of Data in any Findings and will not include any actual Data.
- b. Publication. Licensee may not publish any Findings or Data (or summaries of Data or any other derivative works from the Data) without first obtaining MGMA's express written approval. Licensee will submit to MGMA a copy of all Findings by written notice for review and approval prior to Publishing. MGMA shall use reasonable good faith efforts to approve or disapprove Licensee's publication of Findings, and provide written notification to Licensee thereof, within sixty (60) days after MGMA's receipt of Licensee's request. However, MGMA's failure to provide such approval or disapproval will not be deemed disapproval or approval, and will not be deemed a breach of this Agreement. MGMA may approve or disapprove any requests for publication in its sole discretion. MGMA's review of the Findings will include, without limitation, assessments of:
 - i. Non-competition: assuring that Licensee is not providing Data in the Findings that will reduce sales or otherwise compete with any MGMA (or MGMA affiliate) product or service, whether now existing or hereafter developed. MGMA further reserves the right to limit, in its sole discretion, the amount of summary Data included in the Findings to comply with MGMA's then-current policies regarding the use of Data;
 - ii. Confidentiality: assuring that Findings will not identify individual Data subjects or their associated medical practice groups and that confidentiality of the Data, Data subjects and associated medical practice groups, will be maintained; and
 - iii. Compliance with Agreement: assuring that Findings comply with this Agreement.
- c. Attribution. To the extent MGMA agrees in writing that any Findings may be published, both MGMA and Licensee will be credited as researchers. MGMA will be credited as the source of the Data. Notwithstanding the foregoing, MGMA reserves the right to disassociate itself from any Findings in its

sole discretion. In the event MGMA elects to disassociate from any Findings, it will provide Licensee with written notice and Licensee will then remove all references to MGMA from any Findings.

17. **Payments.** In consideration for access to the Data and the license granted herein, Licensee agrees to pay MGMA a fee in the amount specified in the Order Form, DataDive, or other MGMA web site or resource. Such fee will be payable upon execution of this agreement and receipt of the invoice. The license becomes effective upon execution of this agreement. In the event that Licensee fails to timely make any payment to MGMA which is due under this Agreement, such outstanding amount will bear interest at the rate of one and one half percent (1.5%) per month or the highest percentage allowed by applicable law, whichever is lower, except as otherwise provided in the Order Form. This paragraph may not apply to certain survey participants, as provided in MGMA policies.
18. **Remedies.** Licensee acknowledges and expressly agrees that MGMA will suffer irreparable harm if Licensee breaches the terms of this Agreement and/or the Order Form, and that monetary damages would not be an adequate remedy for any such breach. MGMA will be entitled to, and Licensee will not oppose the granting of, equitable relief, including injunction and specific performance to the maximum extent available under any applicable law, in the event of any such breach or threatened breach, in addition to all other remedies available to MGMA at law or in equity. Licensee waives any requirement of a bond in connection with such remedy.
19. **Commercial Item.** MGMA developed DataDive at private expense. If Licensee is a branch or agency of the United States Government or is otherwise subject to the Federal Acquisitions Regulations System, the following provisions apply: DataDive is a "commercial item" 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, and the Data is provided to the U.S. Government or controlled entity only as a commercial item. Consistent with 48 C.F.R. 12.212 (and 48 C.F.R. 227.7202, if applicable), all U.S. Government users and controlled entities obtain access to the Data with only those rights set forth herein.
20. **Warranty Disclaimer.**

THE DATA AND DATADIVE ARE PROVIDED "AS IS." NEITHER MGMA NOR ITS RELATED ENTITIES MAKE ANY, AND HEREBY DISCLAIM ALL, WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, INTEGRATION, SECURITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR ANY OTHER WARRANTY IN CONNECTION WITH ANYTHING DONE OR SUPPLIED BY MGMA PURSUANT TO THIS AGREEMENT.

IN NO EVENT WILL MGMA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS (THE "MGMA PARTIES") BE LIABLE TO LICENSEE, ITS USERS (OR ANY OF THEIR RESPECTIVE AGENTS OR REPRESENTATIVES) OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN. IN NO EVENT WILL THE LIABILITY OF THE MGMA PARTIES IN THE AGGREGATE FOR ANY ALLOWABLE DAMAGES EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID BY LICENSEE UNDER THIS AGREEMENT OR, IF NONE, THEN THE AMOUNT OF ONE THOUSAND DOLLARS IN THE AGGREGATE FOR ALL CLAIMS. IF LICENSEE OR ANY OF ITS USERS IS DISSATISFIED WITH DATADIVE, LICENSEE'S AND ITS USERS' SOLE AND EXCLUSIVE REMEDY SHALL BE TO DISCONTINUE USE OF DATADIVE AND TERMINATE THIS AGREEMENT IN ACCORDANCE WITH SECTION 25.

21. **Representations and Warranties.** Licensee represents and warrants that: (i) it has all necessary power and authority to execute and enter into this Agreement; (ii) this Agreement is legally binding upon Licensee and its Users, and is enforceable in accordance with its terms; (iii) this Agreement does not violate or conflict with any agreement or arrangement of Licensee or any of its Users with any third party; (iv) Licensee will strictly comply with all of the terms of this Agreement; (v) Licensee will not take any actions adverse to MGMA's rights in its Data and will take steps to protect the Data; and (v) Licensee has read and understands the terms of this Agreement, and has either sought the advice of counsel prior to entering this Agreement or knowingly waived its option to do so.
22. **Indemnification.** Licensee agrees to indemnify, hold harmless and defend the MGMA Parties from and against any action, cause, claim, damage, debt, demand or liability, including reasonable costs and attorneys' fees, asserted by any person, arising out of or relating to (i) Licensee's or any of its Users' use of DataDive and/or Data; (ii) any unacceptable use of DataDive and/or Data, including, without limitation, any actions taken by Licensee or its Users contrary to or otherwise in violation of this Agreement; and (iii) Licensee's breach of this Agreement. MGMA enters into this Agreement in reliance upon the indemnity, limitations of liability and the disclaimers of warranties and damages set forth above, which form an essential basis of the bargain between the parties. The limitations and exclusions of liability and disclaimers specified in this Agreement will apply even if they have failed of their essential purpose.

23. Term and Termination.

- a. Without Cause. Licensee may terminate this Agreement at any time without cause by providing written notice to MGMA at least thirty (30) days prior to termination. Licensee shall remain liable for any unpaid fees through and following termination and shall remain obligated under all provisions that survive termination of this Agreement.
- b. By MGMA.
- i. **For cause.** If Licensee breaches the terms of this Agreement, exceeds the scope of the license granted herein, or in any way compromises the value of Data, MGMA may, in its sole discretion and without notice, to: (i) remove or disable access to all or any portion of DataDive and Data; (ii) suspend Licensee's and its Users' access to or use of all or any portion of DataDive and Data; and (c) terminate this Agreement. If MGMA terminates this Agreement under this Section, Licensee shall remain liable for any unpaid fees and MGMA will be under no obligation to refund any license fees. MGMA will further have the ability to pursue any and all other remedies against Licensee.
- ii. **Without Cause.** MGMA may terminate the Agreement and access to the Data and DataDive for any reason by providing Licensee with thirty (30) days advance written notice. In the event MGMA terminates the Agreement without cause, MGMA will refund Licensee for each month of the Data License purchase
- c. Effect of Termination. Upon termination or expiration of this Agreement, except as otherwise expressly set forth herein, all rights granted to Licensee in this Agreement are immediately revoked, including, without limitation, all rights to use DataDive, any portion thereof and any Data. Within five (5) business days after the termination or expiration of this Agreement, Licensee shall securely destroy any Data downloaded from DataDive, and all copies thereof, and certify in writing that such information has been destroyed. All provisions of this Agreement relating to MGMA's rights in and to the DataDive and Data, and requiring Licensee to maintain the confidentiality of MGMA's DataDive, Data, and other Confidential Information will

survive the termination or expiration of this Agreement for five (5) years. Further, Licensee will be required to make any payments due and owing to MGMA.

- d. **Archive Copies.** Notwithstanding the terms of Section 23c) above, upon termination of this Agreement, Licensee may keep archive copies of any materials or reports it has created with the Data. Licensee may not, however, continue using or maintaining the Data in any other manner after termination or expiration of the Agreement.

24. **Notice.** Any notices permitted or required hereunder will be in writing, delivered to the parties at their addresses set forth in the DataDive registration form (or as otherwise notified in writing) by personal delivery, registered mail, express courier service or e-mail. Either party may update its contact information for purposes of this Section by providing written notice to the other party of such changes.

To contact MGMA, please contact:

MGMA-ACMPE

Attn: Data Solutions - License

104 Inverness Terrace East

Englewood, CO 80112

Phone: 303.799.1111

25. **Relationship.** There is no joint venture, partnership, agency or fiduciary relationship existing between the parties and the parties do not intend to create any such relationship by this Agreement. Licensee is engaged in an independent business and will perform its obligations under this Agreement as a licensee and not as the agent or employee of MGMA. Licensee does not have the authority to act for MGMA or to bind MGMA in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of MGMA. Licensee will be responsible for all of the acts and omissions of all of its employees, subcontractors, students, agents and representatives relating to this Agreement and all such acts and omissions will be deemed to be the acts and omissions of Licensee. Licensee will make no representations - expressly or through conduct - that it is affiliated with, sponsored by or endorsed by MGMA.
26. **Publicity.** The parties may not use each other's names, trademarks, copyrighted materials, or other intellectual property or proprietary information in any promotional efforts or publicity of any kind without the written permission of the respective party.
27. **Modification.** MGMA shall have the right, at any time, to add to or modify the terms of this Agreement. Licensee's continued access to or use of DataDive or Data after the date of delivery for the notice or a click wrap agreement to such amended terms to Licensee is deemed to constitute acceptance of the amendment. If Licensee disagrees with any new or modified terms of this Agreement, Licensee may elect to terminate this Agreement and its access to DataDive and the Data as its sole and exclusive remedy.
28. **Waiver.** Any failure of one party to comply with any obligation hereunder may be expressly waived in writing by the other party, but such waiver or failure to insist upon strict compliance with such obligation will not operate as a waiver of, or estoppel with respect to, any subsequent failure.
29. **Interpretation and Enforcement.** This Agreement will be governed by and construed in accordance with Federal law and when not inconsistent, the laws of the State of Colorado without giving effect to the principles of conflicts of laws thereof. All disputes arising from or relating to this Agreement or the use of DataDive will be within the exclusive jurisdiction of the state and/or federal courts located within the State

of Colorado and the parties hereby consent to such exclusive jurisdiction and waive objections to venue therein.

30. **Severable.** If any part of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, that part will be enforced to the maximum extent permitted by law, and the remainder of this Agreement will remain fully in force.
31. **Assignment.** This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement creates or shall be deemed to create any rights in any person, firm, corporation or other entity other than MGMA and Licensee. Licensee may not assign or transfer (including, without limitation, in connection with a sale of assets, merger, change of control, reorganization or by operation of law) any of its rights or delegate any of its duties under this Agreement (including, without limitation, appointing a replacement for Investigator, as applicable) without the prior written consent of MGMA (and any assignment in violation of this clause is void *ab initio*). Further, MGMA may immediately terminate this Agreement upon any change of control of Licensee without the prior written consent of MGMA. MGMA may freely assign this Agreement or any of its rights or delegate any of its duties under this Agreement.
32. **Policies.** MGMA reserves the right to create and post additional policies on DataDive from time to time. Licensee and its Users shall be subject to the terms of all such policies which are incorporated by reference into this Agreement. Continued access to or use of DataDive after the date of posting of such policies shall constitute acceptance of the policies. If Licensee disagrees with any of the policies, Licensee may elect to terminate this Agreement and its access to DataDive as its sole and exclusive remedy.
33. **Electronic Contracting and Communications.** Licensee agrees that MGMA may communicate with Licensee and Users by means of electronic communications, including (i) sending electronic mail to the email address provided during registration or (ii) posting notices or communications on DataDive. Licensee should maintain copies of electronic communications by printing a paper copy or saving an electronic copy. Electronic communications shall be deemed received when sent to the email address provided at the time of registration or when posted on DataDive. For those communications or records that MGMA is otherwise required under applicable law to provide in a written paper form, Licensee agrees that MGMA may provide such communications or records by means of electronic communications. Licensee agrees that all licenses, policies, notices, disclosures and other communications that MGMA provides electronically constitute written communications and Licensee and its Users specifically consent to contract with MGMA electronically.
34. **Entire Agreement.** This Agreement, MGMA's online policies, and any Order Forms or other registration forms contains, and is intended as, a complete statement of the arrangements between the parties with respect to its subject matter and supersedes all prior Agreements between the parties with respect to those matters.

BY CLICKING "ACCEPT" BELOW, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD THE FOREGOING AGREEMENT AND AGREE TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE, YOU MAY NOT ACCESS OR USE THE MGMA DATA