

REDDINET® MASTER AGREEMENT

This Software License and Hardware Support Agreement (this "Agreement") is made by and between the Hospital Association of Southern California ("HASC") and County of Monterey (the "Customer") as of the 19th day of September, 2018.

RECITALS

HASC has established the ReddiNet® computerized emergency communications network (the "System"), to provide an emergency communications link with all participating customers.

HASC is a trade association with the technical and centralized resources which enable it to effectively administer ReddiNet® system-wide support, and Customer wishes to participate in the System, subject to the terms and conditions set forth below.

Therefore, in consideration of the foregoing premises and the covenants and promises described below, the parties agree as set forth below.

1. Deliverables. Customer and HASC hereby agree that, in accordance with and subject to the terms and conditions of this Agreement, HASC will provide the following items and services that are checked in the Deliverables Ordered column (the "Deliverables"). The services include training materials: User Guides, online independent training courses, in-person classes or online webinars.

FY 2018 - 2019								
Facility	Status	Mass Casualty Incident - MCI	Messages	Assessment	Bed Capacity	Family Reunification Center - FRC	Total	Annual Fees
Community Hospital of Monterey Peninsula	✓	✓	✓	✓	✓	✓	6	\$3,882
Mee Memorial Hospital	✓	✓	✓	✓	✓	✓	6	\$3,882
Natividad Medical Center	✓	✓	✓	✓	✓	✓	6	\$3,882
Salinas Valley Memorial Health System	✓	✓	✓	✓	✓	✓	6	\$3,882
Monterey County Emergency Medical Services, Public Health, Department Operations Center, County Communications, Emergency Operations Center, and Alternate Care Sites	✓	✓	✓	✓	✓	✓	6	\$3,882
Fixed fee for up to 50 of Long Term Care, Clinics, Blood bank, Dialysis Centers, etc.			✓	✓	✓			\$2,185
Subtotal								\$21,595

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Facility	Status	Mass Casualty Incident - MCI	Messages	Assessment	Bed Capacity	Family Reunification Center - FRC	Total	Annual Fees
Community Hospital of Monterey Peninsula	✓	✓	✓	✓	✓	✓	6	\$3,996
Mee Memorial Hospital	✓	✓	✓	✓	✓	✓	6	\$3,996
Natividad Medical Center	✓	✓	✓	✓	✓	✓	6	\$3,996
Salinas Valley Memorial Hospital	✓	✓	✓	✓	✓	✓	6	\$3,996
Monterey County Emergency Medical Services, Public Health, Department Operations Center, County Communications, Emergency Operations Center, and Alternate Care Sites	✓	✓	✓	✓	✓	✓	6	\$3,996
Fixed fee for up to 50 of Long Term Care, Clinics, Blood bank, Dialysis Centers, etc.			✓	✓	✓			\$2,251
Subtotal								\$22,231
Total for Both Years								\$43,826

1.1 Fees and Payment. HASC will invoice Customer in advance for annual fees hereunder beginning with activation of deliverables, and on a monthly basis for any other fees hereunder, in accordance with Deliverables ordered by Customer, and Customer will pay HASC in accordance with the payment terms described below.

In addition to the fees described in Deliverables, Customer shall pay HASC upon receipt of any invoice for any taxes, duties, excises or any other similar government charges (except those based on HASC's net income), which HASC may be required to collect or pay upon the sale, use, licensing, or delivery of the Deliverables or any other matter related to this Agreement. For services satisfactorily rendered, and upon receipt and approval of the invoices, the County agrees to compensate Contractor in accordance with the above listed terms. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

1.2 Payment Provisions

HASC may, upon at least 60 days' notice prior to any anniversary date of the activation of the System for Customer, County shall pay CONTRACTOR in accordance with the payment provisions set forth in the above Scope of Services. The total amount payable by the County to CONTRACTOR under this Agreement is not to exceed the sum of \$43,826.00. The prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to

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be spent under this Agreement.

Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.

1.2.1 provided that (1) HASC provides written justification to Customer for such increase at the same time as such notice, and (2) Customer may terminate this Agreement upon notice to HASC within 30 days of its receipt of any such notice.

2. Term and Termination

2.1 **Term.** This Agreement shall be effective September 19, 2018 (the "Effective Date") as of ReddiNet Activation Date.

2.2 **Termination by Either Party for Cause.** Either HASC or Customer may terminate this Agreement with prior notice to the other of any material breach of this Agreement, provided the injured party has given the other party notice of such breach and there has been a failure to cure such breach within 30 days after receipt of such notice.

2.3 **Termination by HASC.** HASC may also immediately terminate this Agreement with prior notice to Customer if any of the following occur:

2.3.1 Customer fails to comply with its obligations under Section 4 of Appendix B;

2.3.2 Customer fails to make payments as required in this Agreement; or

2.4 **Governmental or Vendor Actions.** In the event any governmental body having jurisdiction over any aspect of HASC's business, or any telecommunications carrier for HASC's Communication Services or the System, issues any opinion, rule, tariff, schedule, guidelines, order, or other directive of any nature which prevents HASC from providing part or all of HASC's Communication Services or the System or otherwise affects any aspect of HASC's business, HASC may, upon 45 days' prior notice, terminate this Agreement without any liability.

2.5 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notices, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

2.6 **Modification or Discontinuance.** HASC may modify or discontinue Communication Services, the System or Customer's use of the System on 60 days' notice. HASC shall not be liable to Customer for any such modification or discontinuance. In addition, if HASC loses its right to provide any or all of its Communication Services, HASC may terminate this Agreement in whole or in part on 30 days' notice.

2.7 **Termination for Convenience.** Either party may terminate this Agreement effective as of any time for any reason upon 60 days' written notice to the other party.

2.8 Customer's Return of Deliverables. Upon termination of this Agreement, Customer shall return proprietary training and service manuals and any promotional or advertising materials relating to the Deliverables or System to HASC. Customer shall notify HASC of other HASC proprietary materials that Customer is not able to return to HASC, and upon HASC's request Customer shall destroy other HASC proprietary materials that Customer does not return to HASC and certify such destruction in writing. Thereafter, Customer shall not be permitted to participate in the System unless Customer enters into a new written agreement under terms agreeable to HASC.

2.9 Customer's Obligation to Pay. Termination of this Agreement shall not relieve Customer of its obligation to pay all undisputed HASC fees and invoices accruing prior to termination.

2.10 Suspension of Performance. If either party defaults in the performance of its obligations under this Agreement, the other party may, in addition to its other available remedies in this Agreement, at law, or in equity, suspend performance of its obligations until such default is corrected.

2.11 Survival. Upon termination or expiration of this Agreement, Customer and HASC shall continue to remain obligated with respect to the confidentiality obligations as described in Sections 4 and 8 of Appendix B and in Appendix B-1 to this Agreement; the indemnification obligations as described in Section 4 and Appendix B-1 to this Agreement; and the insurance obligations as described in Section 5.

3. Indemnification

3.1. The Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents, employees, or subcontractors from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by the Contractor and/or its students, officers, agents, employees or subcontractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of County and/or its officers, agents, employees and subcontractors. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

3.2. The County shall indemnify, defend, and hold harmless the Contractor, its students, officers, agents, employees, and subcontractors from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by the County and/or its officers, agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of the County and/or its students, officers, agents, employees and subcontractors. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the Contractor. The County shall reimburse the Contractor for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless the Contractor under this Agreement.

Both parties are responsible for providing proof of insurance or self insurance for: (a) commercial general liability insurance or a program of self-insurance, including but not limited to premises, personal injuries, products, and completed operations, with a combined single limit of not less

than \$1,000,000 per occurrence and (b) workers' compensation insurance in accordance with California Labor Code section 3700 or an authorized program of self-insurance, with a minimum of \$1,000,000 per occurrence for employer's liability. Both parties shall list the other as the certificate holder as follows:

County of Monterey
1270 Natividad Road
Salinas, CA 93906

Hospital Association of Southern California - ReddiNet
515 South Figueroa Street, Suite 1300
Los Angeles, CA 90071-3300

4. Insurance

4.1 **Commercial General Liability Insurance**, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

4.2 **Business Automobile Liability Insurance**, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

4.3 **Workers' Compensation Insurance**, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

4.4 **Professional Liability Insurance**, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

5. Miscellaneous

5.1 **Modifications.** No modifications or amendments to this Agreement and no waiver of any provisions hereof shall be valid unless in writing and signed by duly authorized representatives of the parties.

5.2 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that Monterey County in the State of California shall be the exclusive forum for any action brought under this Agreement.

5.3 **Limitations on Actions.** No actions or claims of any form arising from this Agreement or the use of the Deliverables may be brought by either party more than two years after the facts giving rise to the cause of action have arisen.

5.4 **Notices.** Notices required under this Agreement shall be delivered personally, or by first-class, postage pre-paid mail to the County and CONTRACTOR's contract administrators at the addresses listed below:

County of Monterey
1270 Natividad Road
Salinas, CA 93906

Hospital Association of Southern California - ReddiNet
515 South Figueroa Street, Suite 1300
Los Angeles, CA 90071-3300

5.5 **Section Headings.** The Section headings throughout this Agreement are for reference purposes only, and the words contained within such headings shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

5.6 **Force Majeure.** Neither party to this Agreement shall be liable or in default for any loss, damage, or delay in its performance of this Agreement, except for delays in payment, if such loss, damage or delay shall be due to any cause whatsoever beyond its reasonable control, including, but not limited to, acts of God, acts or regulations or decrees of any government, earthquake, flood, fire, power blackout, unusually severe weather, acts of the enemy, events or war, embargo, strike, lock-out, dispute with work persons, accidental delay in transportation, shortage of fuel or supplies, inability to obtain materials, or other causes. In the event of such delay, the time for performance under this Agreement shall be extended for the time necessary to complete performance if the party incurring the delay exercises due diligence as the circumstances require.

5.7 **Severability.** If any term or condition of this Agreement shall to an extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

5.8 **Assignment.** Neither party may assign this Agreement, convey its interests in the Deliverables, delegate its duties, or assign the right to receive payments without the other party's consent. Any attempted assignment or transfer in contravention of this Section shall be null and void. This Agreement shall be binding on successors and assigns of the parties, if any.

5.9 **Nonwaiver.** Any failure or delay by either party to exercise or partially

exercise any right under this Agreement shall not be deemed a waiver of any of the rights, powers, or privileges under this Agreement.

5.10 Full Cooperation of Customer. Customer agrees that it will provide its full cooperation to HASC with regard to all aspects of this Agreement, and understands that, without such cooperation, the timely completion of this Agreement will be impossible. Such cooperation includes, but is not limited to, access to all necessary personnel, procedures, data for testing and documents of Customer on an as-needed basis.

5.11 Books, Records and Audit. HASC shall maintain books and records relating to all transactions occurring pursuant to this Agreement for a period of three years following termination of this Agreement. Customer and its duly authorized representatives shall have the right upon reasonable notice and at all reasonable hours of normal business days to examine and to copy such records and materials in the possession or under the control of HASC with respect to this Agreement. The cost of such audit or inspection shall be borne by Customer. All information examined, made available and copied by Customer and its representatives shall be deemed to be HASC's confidential information and subject to the same protections as the HASC Materials under Section 4.2 of Appendix B.

5.12 Delegation of Authority to HASC.

5.12.1 Customer delegates to HASC the authority to enter into such agreements with vendors or suppliers as are necessary to (1) provide, service and maintain the Deliverables; (2) provide training of Customer employees in the use of the Software; (3) provide administrative support; and (4) take other such additional steps as are appropriate to accomplish the foregoing. Customer shall not directly contact any such vendor or supplier without HASC's prior written approval, and shall promptly provide HASC with any copies of correspondence, in any medium, between Customer and any such vendor or supplier.

5.13 Exclusive Vendor Relationships. Customer shall not, directly or indirectly, solicit and/or contract with other vendors or suppliers to provide any or all of the equipment or services covered by this Agreement during the term of this Agreement, including any renewals hereof, and for three (3) years thereafter.

5.14 Customer acknowledges that (i) the restrictions contained in this Section 5.13 are necessary, fundamental, and required for the protection of HASC, (ii) these restrictions relate to matters which are of a special, unique and extraordinary character and which give these restrictions a special, unique value, and (iii) breach of these restrictions will result in irreparable harm and damages to HASC which cannot be adequately compensated by monetary award. Accordingly, in addition to any other remedies available in law and/or equity, HASC shall be entitled to the immediate remedy of a temporary restraining order, preliminary injunction or such other form of injunctive or equitable relief as may be issued by any court of competent jurisdiction to restrain or enjoin Customer from breaching these covenants.

5.15 The parties hereto intend for the restrictions set forth in this Section 5.13 to be enforced to the fullest extent possible and, to the extent that the time period, scope, or any other aspect of such restrictions is determined by a court or other tribunal of competent jurisdiction to be illegal and/or unenforceable, such restrictions shall be deemed to be reformed in such a manner that the narrowest change to the time period, scope, or any other aspect of such restrictions is made as shall be required in order to avoid such illegality and/or unenforceability.

5.16 Acknowledgment of Understanding – Entire Agreement. Customer acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions. Customer and HASC agree that this Agreement is subject to the terms and conditions of Deliverables, Appendix B (Software), Appendix B-1 (Business Associate Agreement) Appendix C (Hardware Purchase and Support Services), and Appendix D (Communications Services), which are attached hereto and incorporated herein by this reference as they apply to Customer. Customer also agrees that this Agreement is the complete and exclusive statement of the agreement between HASC and Customer and supersedes all proposals, representations or prior agreements, oral or written, and any other communications between HASC and Customer relating to the subject matter of this Agreement.

CUSTOMER:
County of Monterey

By: _____

Date: _____

Printed Name: _____

Title: _____

Notice Address:
1270 Natividad Road
Salinas, CA 93906

HOSPITAL ASSOCIATION OF
SOUTHERN CALIFORNIA

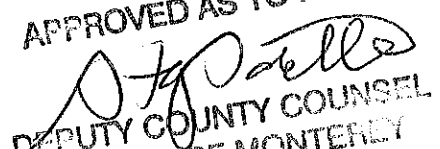
By: _____

Date: 9/24/2018

Printed Name: Scott Twomey

Title: SVP-Chief Financial Officer

Notice of Address:
515 South Figueroa Street, Suite 1300
Los Angeles, CA 90071-3300

APPROVED AS TO FORM

DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

Reviewed as to fiscal provisions

Auditor-Controller
County of Monterey
10-8-18

APPENDIX B – SOFTWARE

2. SOFTWARE LICENSE

2.1 **Grant of License.** HASC hereby grants, and Customer accepts, a nontransferable, nonexclusive license to use the software modules ordered in the Agreement and the Documentation (as defined below) only in accordance with the terms and conditions in this Appendix B and the other parts of the Agreement (the “Software”).

2.2 **Limitations on License.** Except as allowed under Section 1.3 of this Appendix B, Customer may not copy, disassemble, decompile, reverse engineer, modify, translate, display, sell, sublicense, lease, rent, assign or otherwise transfer, use or make available or disclose the Software in any form, in whole or in part, to any third party, without the prior written consent of HASC. Customer will take appropriate action by instruction, agreement or otherwise with persons permitted access to the Software to satisfy its obligations under the Agreement with respect to protection of the Software.

2.3 **Title.** Title to and all rights and interests in the Software and its code are the exclusive proprietary property of HASC and are protected by copyright, patent and trade secret laws. The original and any Copies, in whole or in part, including translations, compilations, copies with modifications, enhancements, derivative works, and updated versions are and shall remain the exclusive property of HASC. Customer will take all steps necessary to protect HASC’s proprietary rights and confidentiality in the Software, including, but not limited to, the proper display of copyright, trademark, trade secret and other proprietary notices on any copies of the Software. Except for the license granted under the Agreement, nothing in the Agreement shall be construed as transferring to Customer any right, title, or interest in the Software or any portions thereof, or as conferring any license or other right, by implication, estoppel or otherwise under any trade secrets, trademark, proprietary right, copyright, patent or otherwise. Customer shall not alter or remove from the Software or other proprietary HASC materials or data any notices or identification which indicate ownership of HASC.

2.4 **Documentation.** HASC will provide to Customer training materials to assist the Customer in use of the ReddiNet system.

3. SOFTWARE SUPPORT SERVICES

3.1 HASC agrees to provide the software support services described in this Section 2 (“Software Support Services”).

3.2 The specifications for the Software shall be the documentation for the Software provided by HASC to Customer (the “Software Specifications”). HASC will use commercially reasonable efforts to correct all failures of the Software to operate substantially in accordance with their Software Specifications (“Software Error(s)").

3.3 HASC will provide enhancements and modifications to the Software that are made generally available at no additional charge to HASC’s other ReddiNet® customers receiving Software Support Services similar to the Software Support Services provided hereunder. Customer must purchase any additional equipment and third-party software which

HASC deems required, in its reasonable technical and business judgment, to continue the basic functionality of the Software. If Customer does not purchase such additional equipment and third-party software, HASC shall be entitled to terminate the Agreement in accordance with Section 3.2 of the Agreement. New releases and new versions of the Software (including, but not limited to, significant new software functionality which are not made generally available to HASC's other customers at no additional charge) are not provided hereunder, but will be made available at HASC's then current fees for such items. Enhancements and modifications to, and new releases and new versions of, the Software, shall be included in the definition of "Software" for purposes of the Agreement.

3.4 HASC will provide commercially reasonable telephone assistance to Customer's employees in identifying, verifying, isolating and resolving Software Errors. Such telephone assistance will be provided as a supplement to, rather than a substitute for, adequate training for Customer and its users.

3.5 HASC will not be required to correct or perform maintenance or Software Support Services for the following:

- (a) Software Errors caused by any modifications of the Software or related hardware by any party other than HASC;
- (b) problems related to hardware or software not provided by HASC;
- (c) Customer's failure to use enhancements, programming Software Error corrections, or the most current release of the Software provided by HASC;
- (d) Customer's failure to use the Software in accordance with the terms of the Agreement;
- (e) problems related to Customer's combination, operation, or use of the Software with non-HASC software or equipment unless such software or equipment was authorized by HASC; or
- (f) problems occurring in an operating environment outside of the environment recommended by HASC in Appendix C, Attachment 1.

3.6 HASC shall provide the Software Support Services in the following manner:

- (a) Nonemergency Software Support Services between the hours of 9:00 a.m. and 5:00 p.m. (Pacific Time), Monday through Friday, except during the following HASC holidays: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, and December 25 through December 31.
- (b) Emergency Software Support Services via telephone, 24-hours-a-day, 7-days-a-week. For purposes of the Agreement, "Emergency Software Support Services" will mean Software Support Services required to maintain Software availability. Emergency Software Support Services do not include operator instruction, user training, or other problems

which could be handled by Customer through adequate training. Customer may contact HASC by telephone for the Emergency Software Support Services at any time and HASC will make commercially reasonable efforts to respond within two hours after receiving a telephone request from Customer.

(c) HASC shall be under no obligation to provide the Software Support Services if the following occur:

- (i) Customer fails to perform its obligations in Section 2.8;
- (ii) any failure in performance or loss or damage under the Agreement due to any cause beyond either party's reasonable control;
- (iii) failure by Customer to maintain site specifications recommended in writing by HASC;
- (iv) failure by Customer to apply updates to the Software as requested by HASC;
- (v) Customer makes any addition of hardware or software for which Customer has not received prior written approval from HASC; or
- (vi) there is a failure of the Software or any part thereof which is attributable to: (A) inappropriate or unauthorized use; (B) accident, neglect, misuse or abuse; or (C) exposure of the Software to potentially harmful environmental, electrical, or operating conditions.

3.7 HASC may, as it deems required in its reasonable technical and business judgment, modify or enhance the Software.

3.8 HASC and Customer agree to the following:

(a) Customer shall designate one person and one alternate to serve as HASC's support contact (the "ReddiNet® Coordinator") and Customer's management representative, to perform certain obligations of Customer under the Agreement, and to facilitate HASC's performance of the Software Support Services. Only the ReddiNet® Coordinator will be authorized to request and receive Software Support Services provided hereunder on behalf of Customer. Customer may change its ReddiNet® Coordinator at any time by notice to HASC;

(b) Customer understands and acknowledges the need for centralized administration, maintenance, and support of the Software and agrees to utilize only the Software Support Services of HASC and its subcontractors in connection with the Software Support Services, unless otherwise approved in advance and in writing by HASC;

(c) Customer shall provide HASC with notice of changes to the Software or any other vital Software component made by any employee, contractor or agent of Customer. Such changes, without the prior express written consent of HASC, will relieve HASC of any and all obligations to provide the Software Support Services; and

(d) Customer shall operate and maintain the most current release of the Software which HASC has made available to Customer.

3.9 If HASC provides Software Support Services as a result of any of the causes listed in Sections 2.5 or 2.6(c) of this Appendix B, such Software Support Services will be provided at HASC's then-current time and materials rates,

3.10 **Reinstatement Fee.** If Customer desires to renew the Software Support Services of HASC after a period of noncoverage under the Agreement, Customer will pay HASC a reinstatement fee designated by HASC to update the Software to the then-current version. Customer will be responsible for any additional hardware or third-party software which HASC deems required to utilize the then-current version of the Software.

4. DATA AND DATA TRANSMISSION

4.1 **Data Transmission.** HASC will make commercially reasonable efforts to provide access to and use of the System.

4.2 **Data Sharing and Ownership.** Customer and HASC may share data for the purposes of this Agreement. Data that Customer produces and sends to HASC or another party pursuant to this Agreement shall remain the exclusive property of Customer ("Customer Data"). Data produced or modified by HASC, including the format and arrangement of such data, shall remain the exclusive property of HASC. Each party understands and agrees that data transmitted over the System (including Customer Data) may be shared with government and other entities and customers, and it may be subject to disclosure under public records laws.

4.3 **Data License.** Customer grants to HASC a nonexclusive, royalty-free, perpetual, worldwide license to use, reproduce, modify, sublicense and distribute Customer Data to HASC's other customers and government entities subject to the applicable government laws, regulations governing Customer Data.

4.4 **Data Warranty.** Customer shall be responsible for its Customer Data entry activities, and for the accuracy of any Customer Data delivered to HASC or another party pursuant to the Agreement. Customer represents and warrants that Customer Data is true and accurate data and information, to the best of Customer's knowledge. Customer shall promptly correct any errors in such Customer Data. HASC shall not be responsible for errors in Customer Data or data entry done by Customer, or for errors in the Deliverables that result from errors in Customer Data, data entry done by Customer or Customer's failure to comply with the Agreement. Customer is responsible for complying with applicable federal, state, or local laws and/or regulations that apply to the delivery of Customer Data to HASC and that apply to the use and/or disclosure of such Customer Data as set forth under the Agreement.

4.5 **System Disclaimer.** Customer understands and agrees that temporary interruptions to the System may occur which will prevent access to and use of the data, including during power outages, internet downtime, installation and/or maintenance of the System, and other events described in Section 5.6 of the Agreement (Force Majeure). HASC shall not be liable to Customer or any other person or entity for any interruption in the System not caused by HASC's willful misconduct.

4.6 **Exclusive Remedy.** In the event that data to be transmitted through the use of the Software or by or through the System is interrupted, inaccurately transmitted, or not transmitted directly as a result of HASC's failure to perform its obligations under the Agreement (collectively, "Transmittal Error(s)"), Customer's sole and exclusive remedy shall be that HASC will: (1) use commercially reasonable efforts to retransmit the data; or (2) if HASC is unable to retransmit the data, in HASC's judgment, HASC will give Customer a pro rata refund of the fees paid by Customer to HASC under this Agreement for the remainder of the term and the Agreement will terminate; or (3) if the Transmittal Error(s) results in substantial damage to Customer and HASC does not terminate the Agreement, then HASC's only obligation and sole liability to Customer shall be limited to granting Customer credits equal to Customer's reasonable out-of-pocket expenses, as reasonably mitigated by Customer, which Customer can demonstrate are directly attributable to the Transmittal Error(s) by HASC or HASC's vendors, but in no event shall such credits during any one calendar year in the aggregate exceed the lesser of: (i) three times the average monthly revenue received by HASC from Customer for the Deliverables which contained the Transmittal Error(s) over the preceding 12 months (or such lesser time if this Agreement has been in effect for less than 12 months); or (ii) Five Thousand Dollars (\$5,000).

4.7 **Claim Assertion.** Any claim by Customer under this Section must be asserted by Customer in writing within 30 business days after Transmittal Error(s), except that, if such Transmittal Error(s) is not reasonably detectable within such 30-day period by Customer in the exercise of due diligence, then such claim must be asserted no later than ten calendar days after the actual discovery by Customer of such Transmittal Error(s) and within 180 calendar days after the Transmittal Error(s). Customer agrees to supply the requested documentation necessary to support any claim asserted under this Section.

5. OTHER OBLIGATIONS

5.1 **Testing.** When HASC delivers the Software to Customer, Customer will test the Software to ensure that it operates substantially in accordance with the Software Specifications. HASC will repair or replace any Software that does not operate substantially in accordance with such Software Specifications during these tests. Upon completion of these tests, HASC will turn over operation of the Software to Customer.

5.2 Confidentiality and Protection

(a) Customer will maintain the confidentiality of, and protect from theft and unauthorized copying, the Deliverables, any copy made of the Software, and any documentation or information regarding the Deliverables ("HASC Materials") provided to Customer. Customer shall limit access to the HASC Materials to Customer's employees, independent contractors, directors and agents with authorization for and subject to written confidentiality obligations for their use. Customer shall also maintain the confidentiality of any information or data retrieved by Customer over the System regarding any other ReddiNet® customers ("ReddiNet Customer Information"). Customer shall not disclose, publish or release any ReddiNet Customer Information to any third party, and will keep all ReddiNet Customer Information in strict confidence, unless otherwise authorized in writing by the specific ReddiNet® customer to which such ReddiNet Customer Information relates or except for ReddiNet Customer Information

provided to HASC by Customer. HASC will maintain the confidentiality of, and protect from theft and unauthorized copying, any proprietary documentation or information of Customer ("Customer Materials") provided to HASC. HASC shall limit access to the Customer Materials to HASC's employees, independent contractors, directors and agents with authorization for their use. Except as is necessary for the performance of its obligations under this Agreement, HASC shall not disclose, publish or release any Customer Materials to any third party, and will keep all Customer Materials in strict confidence, unless otherwise authorized in writing.

(b) Customer shall promptly provide notice to HASC after obtaining knowledge of the existence of any circumstances surrounding any actual or suspected unauthorized knowledge, possession or use of HASC Materials or ReddiNet Customer Information and shall cooperate with HASC in taking action against unauthorized users, and HASC shall promptly provide notice to Customer after obtaining knowledge of the existence of any circumstances surrounding any actual or suspected unauthorized knowledge, possession or use of Customer Materials and shall cooperate with Customer in taking action against unauthorized users.

(c) Because of the unique nature of the HASC Materials, ReddiNet Customer Information and Customer Materials, each party understands and agrees that, in the event that either party fails to comply with any of the terms of this Section 4.2, the other party (the "Nonbreaching Party") will suffer irreparable and extreme harm and monetary damages may be inadequate to compensate the Nonbreaching Party for such breach. Accordingly each party agrees that the Nonbreaching Party will, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief to enforce the terms of this Section 4.2.

5.3 Protected Health Information. HASC shall comply with the provisions of Appendix B-1 in connection with any Protected Health Information (as there defined) that HASC creates or receives on behalf of Customer under circumstances that constitute HASC Customer's business associate for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Standards for Privacy of Protected Health Information and the Security Standards for the Protection of Electronic Protected Health Information, 45 CFR Parts 160 and 164.

6. LIMITED WARRANTY

HASC warrants that the Software shall perform substantially in accordance with the Software Specifications for 90 days from delivery of the initial Software to Customer. HASC's entire liability and Customer's exclusive remedy for breach of this warranty shall be for HASC, at its option, either to: (a) return the fees paid for the Software; (b) replace Software that does not meet the limited warranty described herein and which is returned to HASC or (c) make commercially reasonable efforts to correct any Software Errors which Customer may find in the Software during the above-described warranty period and which prevent the Software from performing substantially in accordance with the Software Specifications.

7. WARRANTY DISCLAIMERS

HASC GRANTS TO CUSTOMER NO WARRANTIES UNDER THIS AGREEMENT, EITHER EXPRESS OR IMPLIED, OTHER THAN WARRANTIES EXPRESSLY GRANTED TO CUSTOMER IN THIS SECTION 6 OF APPENDIX B. HASC EXPRESSLY DISCLAIMS THE WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT FOR THE DELIVERABLES. HASC DOES NOT WARRANT: THAT THE FUNCTIONS CONTAINED IN THE DELIVERABLES WILL MEET CUSTOMER'S REQUIREMENTS; THAT THE OPERATION OF THE DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ALL ERRORS OR DEFECTS IN THE DELIVERABLES WILL BE CORRECTED. HASC DOES NOT WARRANT THE ACCURACY OR TIMELINESS OF THE DATA TRANSMITTED VIA THE INTERNET.

8. LIMITATION OF LIABILITIES

8.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, IT IS EXPRESSLY AGREED THAT HASC AND ITS SUPPLIERS SHALL IN NO EVENT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THE AGREEMENT, EVEN IF HASC IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF GOODWILL, LOSS OF USE, LOSS OF PROFITS, TORTIOUS CONDUCT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR STRICT LIABILITY) OR INTERRUPTION OF BUSINESS. HASC AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY, INSTALLATION OR OPERATION OF THE DELIVERABLES UNDER THE AGREEMENT.

9. EXCEPT FOR DEFENSE AND INDEMNIFICATION OBLIGATIONS AS SET FORTH WITHIN THIS AGREEMENT, NEITHER THE CUSTOMER NOR HASC SHALL BE LIABLE TO THE OTHER FOR ANY DAMAGES EXCEEDING THE AGGREGATE INSURANCE COVERAGE LIMITS SET FORTH UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY AND ALL LEGAL AND REGULATORY ACTIONS, ALLEGED DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES OR FINANCIAL LOSS, IN ANY WAY ARISING FROM OR RELATING TO THE PERFORMANCE OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE.

10. DEFENSE OF CLAIMS

HASC will defend Customer against any third party action against Customer that is based on a third party claim that the Software infringes a United States registered patent or copyright as of the Effective Date and shall pay any costs or damages that may be finally awarded against Customer resulting from such action, subject to Customer promptly notifying HASC in writing of any such action. HASC will not defend Customer, however, if the claim of infringement is caused by: (1) Customer's misuse or modification of the Software or System; (2) Customer's

failure to use corrections or enhancements made available by HASC; (3) Customer's use of the System or Software in combination with any product or information not developed or authorized by HASC; (4) Customer's distribution, marketing or use for the benefit of third parties of the System or Software not in accordance with this Agreement; or (5) information, direction, specification or materials provided by Customer or any third party. If the Software is, or in HASC's opinion is likely to be, held to be infringing, HASC shall at its expense and option either (a) procure the right for Customer to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to be noninfringing or (d) direct the return of the Software and have the right to terminate the Agreement. The foregoing remedies constitute Customer's sole and exclusive remedies and HASC's entire liability with respect to intellectual property claims and actions.

APPENDIX B-1 - HIPAA Requirements

To the extent that Customer is a covered entity or business associate under the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations (collectively, "HIPAA"), HASC provides services to the Customer that may involve Protected Health Information (PHI), as the term is defined at 45 CFR § 160.103, and therefore HASC may qualify as the Customer's business associate under HIPAA.

For the purpose of both parties complying with HIPAA, HASC and Customer agree that:

1. Permitted Uses and Disclosures of Protected Health Information (PHI).

HASC may use and disclose PHI for the purposes contemplated by the Agreement, as the same is amended or supplemented from time to time, and to the extent that such use or disclosure would not violate HIPAA if done by Customer. HASC also may use and disclose PHI for the proper management and administration of its business and to carry out its own legal responsibilities, as long as, in the case of any such disclosure, either:

(a) The disclosure is required by law; or

(b) HASC obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to such person, and that the person will notify HASC of any instances of which it is aware in which the confidentiality of the information has been breached.

2. HASC's Obligations. HASC shall:

2.1. Not use or further disclose Protected Health Information except as permitted or required by this appendix, or required by law.

2.2. Use appropriate safeguards to prevent use or disclosure of PHI otherwise than as permitted by this Appendix, including administrative, physical and technical safeguards for e-PHI that reasonably and appropriately protect the confidentiality, integrity and availability of Customer's electronic Protected Health Information.

2.3. Comply with the applicable requirements of the Security Standards for Protection of Electronic Protected Health Information at 45 CFR Part 164 Subpart C.

2.4. Report to Customer as soon as possible any use or disclosure of PHI not provided for by this Appendix of which HASC becomes aware.

2.5. Report to Customer as soon as possible any security incident involving PHI, except that this section shall hereby serve as notice, and no further reporting shall be required, of the regular occurrence of unsuccessful attempted security incidents.

2.6. Report to Customer a breach of unsecured PHI as required by 45 CFR § 164.410.

2.7. Ensure that its agents, including any subcontractor, to whom it provides PHI agree to the restrictions and conditions that apply to HASC with respect to such information and implement the safeguards required above with respect to electronic Protected Health Information.

2.8. Upon Customer's request, make available PHI in accordance with 45 CFR § 164.524 to the extent that HASC maintains PHI in a designated record set.

2.9. Upon Customer's request, make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526 to the extent that HASC maintains PHI in a designated record set.

2.10. Upon Customer's request, make available the information necessary for the Customer to provide an accounting of disclosures in accordance with 45 CFR § 164.528.

2.11. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of the United States Department of Health and Human Services, for purposes of determining the Customer's and HASC's compliance with their legal obligations.

2.12. Upon termination of the Agreement, return or destroy all PHI to the extent feasible, and, to the extent infeasible, extend the protections of this appendix to such information that cannot be returned or destroyed, and limit further use and disclosure of such information to those purposes that make the return or destruction of the information infeasible.

3. Customer's Obligations.

3.1. Customer warrants that its notice of privacy practices under 45 CFR § 164.520 authorizes HASC's uses and disclosures of PHI as contemplated by the Agreement. Customer shall notify HASC of any limitation(s) in the notice of privacy practices of Customer under 45 CFR § 164.520, to the extent that such limitation may affect HASC's use or disclosure of PHI.

3.2. Customer shall notify HASC of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect HASC's use or disclosure of PHI.

3.3. Customer shall notify HASC of any restriction on the use or disclosure of PHI that Customer has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may affect HASC's use or disclosure of PHI.

3.4. Customer shall not request or cause HASC to use or disclose PHI in any manner that would not be permissible under the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Part 164 Subpart E.

4. No Third Party Beneficiaries. There are no third party beneficiaries of this Appendix.

5. **Breach.** Customer may immediately terminate the Agreement if it determines that HASC has violated a material term of this Appendix, and HASC fails to remedy the violation within thirty (30) days of receipt of written notice thereof.

APPENDIX D - COMMUNICATIONS SERVICES

1. COMMUNICATIONS SERVICES

1.1 HASC agrees to sell, and Customer agrees to purchase, the communications services and related equipment that Customer ordered in Section 1 of the Agreement (the "Communications Services") for the rates described in Deliverables section. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CUSTOMER AGREES THAT THE EQUIPMENT CUSTOMER PURCHASES HEREUNDER, INCLUDING WITHOUT LIMITATION THE SATELLITE EQUIPMENT, SHALL BE USED ONLY FOR THE PURPOSES SPECIFICALLY SET FORTH IN THIS AGREEMENT AND FOR NO OTHER PURPOSE.

2. COMMUNICATIONS SERVICES PROBLEMS

2.1 HASC will make commercially reasonable efforts to provide access to and use of the System using the Communications Services chosen by Customer. Customer understands and agrees that temporary interruptions to the Communications Services may occur which will prevent access to and use of the data, including during power outages, atmospheric or other interference with radio transmissions, internet downtime, satellite transmission downtime, installation and/or maintenance of the Communications Services, and other events described in Section 5.6 of the Agreement (Force Majeure). HASC shall not be liable to Customer or any other person or entity for any interruption in the Communications Services not caused by its willful misconduct.

2.2 In the event of any Transmittal Error(s) as described in Section 3.6 of Appendix B, HASC's only obligation and sole liability to Customer shall be limited to the exclusive remedy described in Section 3.6 of Appendix B.

3. HASC'S DISCLAIMER OF WARRANTIES

HASC GRANTS TO CUSTOMER NO WARRANTIES, EITHER EXPRESS OR IMPLIED FOR THE COMMUNICATIONS SERVICES. HASC EXPRESSLY DISCLAIMS THE WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT FOR THE COMMUNICATIONS SERVICES. HASC DOES NOT WARRANT: THAT THE FUNCTIONS CONTAINED IN THE COMMUNICATIONS SERVICES WILL MEET CUSTOMER'S REQUIREMENTS; THAT THE OPERATION OF THE COMMUNICATIONS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ALL ERRORS OR DEFECTS IN THE COMMUNICATIONS SERVICES WILL BE CORRECTED. HASC DOES NOT WARRANT THE ACCURACY OF THE DATA TRANSMITTED VIA THE COMMUNICATIONS SERVICES.

4. LIMITATIONS OF LIABILITIES

4.1 **Limitation of Liabilities for Data Flow.** ACTIONS OR INACTIONS OF THIRD PARTIES MAY RESULT IN SITUATIONS IN WHICH CUSTOMER'S CONNECTION TO OR USE OF THE COMMUNICATIONS SERVICES MAY BE

IMPAIRED, DISRUPTED OR DAMAGED. HASC DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE COMMUNICATIONS SERVICES AND DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH IMPAIRMENTS, DISRUPTIONS, OR DAMAGE.

4.2 General Limitation of Liabilities

(a) EXCEPT FOR DEFENSE AND INDEMNIFICATION OBLIGATIONS, AS SET FORTH WITHIN THIS AGREEMENT, NEITHER THE CUSTOMER NOR HASC SHALL BE LIABLE TO THE OTHER FOR ANY DAMAGES EXCEEDING THE AGGREGATE INSURANCE COVERAGE LIMITS SET FORTH UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY AND ALL LEGAL AND REGULATORY ACTIONS, ALLEGED DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES OR FINANCIAL LOSS, IN ANY WAY ARISING FROM OR RELATING TO THE PERFORMANCE OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE. (b) IF CUSTOMER OBTAINS ACCESS TO THE SYSTEM USING ITS OWN INTERNET SERVICE PROVIDER, CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR MAINTAINING AND PAYING FOR ITS INTERNET SERVICES. HASC SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR FAILURES OF CUSTOMER TO RECEIVE OR TRANSMIT DATA OR TO USE THE SYSTEM AS A RESULT OF THE INTERNET.