

ArbiMed's SOFTWARE AS A SERVICE AGREEMENT

THIS SOFTWARE AS A SERVICE AGREEMENT (this “**Agreement**”), dated as of the signing of the ArbiMed Pricing Agreement (the “**Effective Date**”), is entered into by and among **ARBIMED, INC.**, a corporation organized and existing under the Laws of Texas and having a place of business at 9400 Grogan’s Mill Road, Suite 200, The Woodlands, Texas, 77380 (“**ArbiMed**”) and “**Customer**”. ArbiMed and Customer are sometimes referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**.”

RECITALS

WHEREAS, ArbiMed has created and/or developed a cloud-based inventory management software designed for medical facilities which may include, but is not limited to, dental, retina, orthopedic, and urgent care clinics; hospitals, emergency medical centers, doctor offices, health care facilities, medical institutions, all other clinics and medical offices, and treatment centers, among others, whose purpose is to track, generate, report and transmit data concerning articles, goods, and items that Customer keeps and/or utilizes in its inventory for its day-to-day operations (the “**ArbiMed Software**”).

WHEREAS the Customer desires to obtain the rights to use of the ArbiMed Software and Equipment (if applicable), combined with hosting and supporting services (as hereinafter defined), for its business operations, and wishes to grant Customer rights for such use under the terms and conditions set forth in the Agreement.

WHEREAS Customer and ArbiMed desire to enter into this Agreement to define their respective rights and responsibilities and to memorialize the terms and conditions pursuant to which Customer will use the ArbiMed Software, Equipment (if applicable), and the Support Services for a fee.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 “Additional Locations” mean any additional facility, office, mobile unit, or setting that needs to be created as a location in the ArbiMed Software, where an independent list of inventories is managed as a result of the implementation and execution of the ArbiMed Software.

1.2 “Affiliate” means, with respect to either Party, any other corporation or business entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Party. For purposes of this definition, the term “control” means direct or indirect ownership of more than fifty percent (50%) of the securities or other ownership interests representing the equity voting stock or general partnership or membership interest of such entity or the power to direct or cause the direction of the

management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

1.3 “ArbiMed Software” has the meaning set forth in the Recitals section of this Agreement.

1.4 “Business Day” means a day other than a Saturday, Sunday, or other day on which commercial banks in New York are authorized or required by Law to be closed for business. **1.5 “Change of Control”** means the occurrence of any of the following events:

- (a) a sale, conveyance or other disposition of all or substantially all of the assets or lines of business of ArbiMed, or
- (b) a merger or consolidation with or into any other entity.

1.6 “Confidential Information” has the meaning set forth in Section 8 of this Agreement.

1.7 “Customer” is the business entity that has been granted the right to use or have access to the ArbiMed Software, including Equipment (if applicable) and to receive the Support Services in accordance with the terms and conditions set forth in this Agreement.

1.8 “Customer Data” means all data, files including, but not limited to, hypertext markup, language files, documents, audio and visual information, graphics, scripts, programs, applets or servlets that Customer creates, installs, uploads, downloads to or transfers in or through the ArbiMed Software or provides in the course of using the ArbiMed Software and the Support Services.

1.9 “Customer Users” means Customer’s Representatives or agents who are authorized to use the ArbiMed Software, Equipment (if applicable), and the Support Services, and that have been supplied user identifications and passwords by Customer or on Customer’s behalf for such purpose.

1.10 “Effective Date” has the meaning set forth in the preamble of this Agreement.

1.11 “Equipment” means hardware (*i.e.*, printers and bar code scanners) that can be purchased from ArbiMed to be used with the ArbiMed Software.

1.12 “Fees” means compensation that Customer shall pay ArbiMed for the use of the ArbiMed Software, Equipment (if applicable), and Support Services provided in this Agreement.

1.13 “Governmental Authority” means: (a) Any federal, state, local, or foreign government, and any political subdivision of any of them; (b) Any agency or instrumentality of any such government or political subdivision; (c) Any self-regulated organization or other nongovernmental regulatory or quasi-governmental

authority (to the extent that its rules, regulations, or orders have the force of law); and (d) Any arbitrator, court, or tribunal of competent jurisdiction.

- 1.14 “Intellectual Property”** means all information, data, works of authorship, discoveries, concepts, technology, methods, know-how, designs, processes, software, algorithms and inventions, whether patentable or not, including, without limitation, those that could be the subject of patent, copyright, industrial design, trade secret or other forms of protection; including, without limitation, all (i) patents; (ii) trademark applications, registrations, service marks, domain names and all renewals and extensions thereto; and (iii) copyright applications and registrations and all restorations, reversions, renewals and extensions thereof.
- 1.15 “Law”** means all federal, state, provincial, regional, territorial, international, and local laws, treaties, conventions, statutes, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof.
- 1.16 “License Grant to Access and Use the ArbiMed Software”** has the meaning set forth in Section 2.1 of this Agreement.
- 1.17 “Party”** has the meaning set forth in the Preamble of this Agreement.
- 1.18 “Person”** means any individual, corporation, company, limited liability company, partnership, joint venture, fund, trust, association, union, organization, or other legal entity or group of persons, whether incorporated or not.
- 1.19 “Personally Identifiable Information”** means any data that could potentially be used to identify a particular Person, such as the full name, social security number, driver’s license number, passport number, email address, etc.
- 1.20 “Protected Health Information”** means any information that includes, but is not limited to, demographic data that relates to (1) a natural person’s past, present, or future physical or mental health or condition; (2) the provision of health care to that person; or (3) the past, present, or future payment for the provision of health care to the individual.
- 1.21 “Representative”** means a Party’s (and its Affiliates’) employees, officers, directors, consultants, agents, subcontractors and legal, technical, and business advisors.
- 1.22 “Subscription Fees”** means the fees payable by Customer in accordance with Section 3.1 of this Agreement and in the ArbiMed Pricing Agreement.
- 1.23 “Support Services”** means the software Support Services furnished by ArbiMed with respect to the ArbiMed Software as specified in this Agreement and Exhibit B.

1.24 “System Availability” is defined in Section 4.3 of this Agreement.

1.25 “Taxes” includes all taxes, assessment, charges, duties, fees, levies, and other charges of a governmental authority, including income, franchise, capital stock real property, personal property, tangibles, withholding, employment, payroll, social security, social contribution, unemployment, compensation, disability, transfer, sales, sue, gross receipts, value-added, and all other taxes of any kind for which a Party may have liability imposed by any governmental authority, whether disputed or not, any related charges or penalties imposed by any governmental authority, and any liability for any other Person as transferee or successor by Law, contract, or otherwise.

1.26 “Term” has the meaning as set forth in Section 9 of this Agreement.

1.27 “Third Party” means any entity or Person other than ArbiMed, Customer, or their Affiliates.

1.28 “Third Party Service Provider” means a Person that provides services to ArbiMed and which includes, but is not limited to, website hosting partners, business partners, integration partners, and any other Third Parties who assist ArbiMed in its business operations.

ARTICLE 2

LICENSE TO ACCESS AND USE SERVICE

2.1 License Grant. Subject to the terms and conditions set forth in this Agreement, ArbiMed hereby grants to Customer, and Customer accepts from ArbiMed a limited, nontransferable, nonexclusive, and worldwide right and license to, and to permit its Customer Users to: (a) access, use, execute, display, perform, operate, maintain, test, implement, and/or integrate the ArbiMed Software; (b) display and print Customer Data using the ArbiMed Software; and (c) use the ArbiMed Software and Support Services solely for Customer’s own internal business operations, provided such internal business operations shall not include commercial timesharing, rental, outsourcing, service bureau, information technology outsourcing, Third Party administration, or any other similar use.

2.2 Licenses from Customer. Subject to the terms and conditions of this Agreement, Customer grants to ArbiMed, ArbiMed Representatives, and its Third-Party Service Providers the non-exclusive, nontransferable, and worldwide right to copy, store, record, transmit, display, view, print, or otherwise use Customer Data to the extent necessary for ArbiMed to perform its obligations under this Agreement, including the provision of Support Services to Customer under this Agreement. Customer acknowledges and agrees that Customer Data and information regarding Customer and Customer’s Users that is provided to ArbiMed and its Third Party Service Providers in connection with this Agreement may be (a) processed by ArbiMed and its Third Party Service Providers to the extent necessary for ArbiMed to perform its obligations under this Agreement, including the provision of Support Services and (b) transferred outside of the country or any other jurisdiction where Customer and Customer’s Users are located. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and

copyright of all Customer Data. The license set forth in this Section 2.2 does not grant ArbiMed any right, title, and/or interest in Customer's Intellectual Property or Confidential Information but only the limited right to use Customer Data solely for the purposes set forth herein.

2.3 Ownership of ArbiMed Software. Except as otherwise expressly set forth in this Agreement, ArbiMed retains all rights, title, and interest in and in connection with the ArbiMed Software in all forms, all copies, and modifications thereof, including all worldwide rights to ArbiMed's Intellectual Property or other proprietary rights in or relating to the ArbiMed Software. Except as otherwise set forth in this Agreement, neither the Customer nor Customer Users and/or Customer Representatives are acquiring any right, title, or interest of any nature whatsoever in the ArbiMed Software, except the license to have access to and use the ArbiMed Software as provided under Section 2.1 of this Agreement.

2.4 Term of the License Rights Granted Under this Agreement. Subject to Section 2.3 of this Agreement, Customer's right to have access to and/or use the ArbiMed Software will be effective on the Effective Date and will terminate upon expiration or earlier termination of this Agreement in accordance with Article 9.

2.5 License Restrictions. The license to have access to and/or use the ArbiMed Software under this Agreement is subject to the following restrictions:

(a) Customer will not use the ArbiMed Software or authorize or permit any other Person under Customer's control to use the ArbiMed Software for any purpose other than those expressly authorized under this Article 2 of this Agreement.

(b) Customer will not lease, distribute, re-distribute, sell, resell, assign, sublicense or otherwise transfer its right in the ArbiMed Software to any other Person nor allow any other Person to access or use the ArbiMed Software, except: (1) as expressly provided in this Article 2; or (2) as necessary for Customer to achieve its business objectives with the use of the ArbiMed Software.

(c) Customer will not upload, forward, or distribute any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the ArbiMed Software.

(d) Except as permitted by Law, or as otherwise permitted by this Agreement, Customer will not translate, reverse engineer, de-compile, or disassemble the ArbiMed Software or otherwise attempt to discover the source code or underlying ideas or algorithms of the ArbiMed Software for any reason.

(e) Customer will not probe, scan, test the vulnerability of, or circumvent any security mechanism used by the sites, servers, or networks connected to the ArbiMed Software.

(f) Customer will not take any action that imposes an unreasonably or disproportionately large load on the sites, servers, or networks connected to the ArbiMed Software.

(g) Customer will not copy or duplicate by any means the ArbiMed Software or any of the Intellectual Property included therein.

(h) Customer will not access or use other Person's data through the ArbiMed Software.

(i) Customer will not maliciously reduce or impair the accessibility of the ArbiMed Software.

(j) Customer will not use the ArbiMed Software to post, promote, or transmit any unlawful, harassing, libelous, obscene, abusive, threatening, harmful, or otherwise unacceptable material.

(k) Customer will not transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability.

(l) Customer may not, or authorize or permit a Third Party to, modify the ArbiMed Software, without the prior written consent of ArbiMed.

2.6 Audit: Verification of Proper Use. During the Term of this Agreement and no more than once per year, ArbiMed or ArbiMed's authorized Representatives may audit Customer's available records at Customer's main office to ensure compliance with this Agreement upon at least ten (10) Business Days' prior written notice. Notwithstanding the foregoing, the Parties agree that ArbiMed or ArbiMed's authorized Representatives may conduct an audit at any time in the event ArbiMed reasonably believes Customer may be in breach of this Agreement. ArbiMed shall notify Customer in writing in advance of the "for-cause-audit" so that ArbiMed and Customer can mutually determine the timing of the audit. The prior written notice shall state the purpose of the "for-causeaudit." ArbiMed shall bear all costs and expenses in connection with any such audit; provided, however, that if any such audit correctly identifies a misuse of the ArbiMed Software by Customer or any other act or omission that on its face constitutes a breach of this Agreement, Customer shall reimburse ArbiMed for all reasonable costs and expenses incurred by ArbiMed in connection with that audit. The audit and its results will be subject to the restrictions of this Agreement regarding Confidential Information and Privacy Laws.

ARTICLE 3

SUBSCRIPTION FEES, TAXES, AND EXPENSES

3.1 Customer Subscription Fees. In exchange for the use of the ArbiMed Software pursuant to the terms and conditions set forth in this Agreement, Customer shall pay to ArbiMed a

subscription fee. The specific amount applicable to this Agreement are contained in the ArbiMed Pricing Agreement that this agreement is attached. All Fees are quoted and payable in United States currency. Customers can decide to opt-out of their subscription in the first 30 days of the contract without the 90-day notice that will be needed otherwise, and the paid subscription fee will be refunded proportionally in case of opt-out.

3.2 Payment Terms. Unless otherwise stipulated herein, **all undisputed fees** shall be due and payable to ArbiMed within ten (10) days from the due date of ArbiMed's invoice. Payments can be: (1) the payment can either be online through the credit card payment portal available on the website page hosting the ArbiMed Software, or via ACH Approved Banking Wire Transfer (2) At the time of signing the contract, ArbiMed will charge Customer a deposit, equivalent to the implementation fee plus one twelfth of the Annual Subscription Fee or two twelfth of the Annual Subscription Fee, whichever is greater. This deposit is refundable within 30 days upon signature of this agreement if the implementation never started.

3.3 Outstanding Payments; Interests. All fees and amounts due to ArbiMed and not paid within ten (10) days after the date such amounts are due and payable, shall bear interest at the lesser of (1) one- and one-half percent (1.5%) per month or (2) the maximum rate of interest allowable by Law. ArbiMed reserves the right to refer Customer's billing account to a Third Party for collection in the event of non-payment. Customer agrees to pay all costs incurred in the collection of any delinquent amounts due, including reasonable attorneys' fees and costs.

3. Taxes and Expenses. Each of the Parties hereto shall bear its own legal, accounting and other costs in connection with this Agreement. Each Party shall pay their own applicable federal, state, and local Taxes incurred in their performance under this Agreement.

ARTICLE 4

INITIAL AND SUPPORT SERVICES, AND MAINTENANCE

4.1 Initial Courtesy Services. Should Customer need and require it, ArbiMed will provide initial assistance to Customer for Customer to be able to begin implementing the ArbiMed Software in its business, through videoconference, telephone conference, or any other method agreed by the Parties. In addition, ArbiMed will, at Customer's request, assist Customer in entering Customer's Data, regarding its existing products and/or inventory, into the ArbiMed Software.

4.2 Support Services. ArbiMed shall provide Customer, for the duration of the Agreement, with Support Services during normal business hours, which are subject to change, from 8:30 am to 5:30 pm Central Time. The Support Services will consist in telephone, electronic, videoconference, and/or face-to-face meetings with Customer (depending on Customer's location), in order to provide assistance to Customer to identify the source of the problem associated with the ArbiMed Software and correct it in accordance with Exhibit B of this Agreement. ArbiMed will have the obligation to provide such Support Services, provided Customer has (a) paid all Fees due; (b) maintained a proper operating environment for the use of the ArbiMed Software in accordance with written guidance or parameters provided by ArbiMed; and (c) complied with this Agreement and its accompanying exhibits, and attachments.

4.3 Availability and System Maintenance

(a) System Availability. ArbiMed will ensure that the ArbiMed Software is available and functional at least 99% of the total amount of hours per calendar month. However, ArbiMed may perform previously scheduled maintenances and upgrades on the ArbiMed Software (and with a prior written 14-day notice to the Customer), which will not be considered as system unavailability. However, the time required to maintain the system will be reasonable and under no circumstances will be more than 4 (four) hours, and no more than 2 (two) times on a 30 (thirty) day period.

(b) In addition to ArbiMed Software maintenance and upgrades, the following will not be considered system unavailability: (1) event of Force Majeure (defined below); (2) malicious attacks on the system; (3) issues associated with local area networks or internet service provider connections, provided ArbiMed takes the proper and reasonable steps to solve the issue as soon as practically possible; (4) in the event Customer tries to access the ArbiMed Software in a country that has internet censorship; and (5) ArbiMed's inability to provide services due to Customer negligent acts or omissions.

(c) In the event that the ArbiMed Software is unavailable for more than 24 hours, Customer will be issued a prorated refund for that day's service.

ARTICLE 5

REPRESENTATIONS, WARRANTIES, COVENANTS, AND REMEDIES

5.1 Representations, Warranties, and Covenants of ArbiMed. ArbiMed hereby represents, warrants, and covenants as of the Effective Date:

(a) It is a company or corporation duly organized, validly existing, and in good standing under the Laws of the State of Texas, and has full company or corporate power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as contemplated in this Agreement, including the right to grant the licenses granted by it hereunder.

(b) It has the company or corporate power and authority and the legal right to enter into this Agreement and perform its obligations hereunder.

(c) It is the exclusive legal owner of the ArbiMed Software, including all Intellectual Property rights thereof.

(d) The Services to be performed under this Agreement will be performed: (1) in compliance with all applicable Laws; (2) by appropriately qualified and trained personnel in a professional and workmanlike manner; and (3) with due care and diligence, and in accordance with an appropriate standard of quality as is customary in the information technology industry with respect to complex information technology systems. ArbiMed further warrants that its employees, agents, consultants, subcontractors, and/or Third-Party service providers are sufficiently

qualified, staffed, and equipped to fulfill ArbiMed's obligations under this Agreement;

(e) The Services will be performed in compliance with all Privacy Laws. Further, ArbiMed represents, warrants, and covenants that it will (1) not use or disclose Protected Health Information other than as permitted by this Agreement or as required by Law; (2) use appropriate safeguards and comply with the applicable Privacy Law with respect to electronic Protected Health Information to prevent use or disclosure of Protected Health Information; (3) immediately report to Customer any use or disclosure of Protected Health Information of which it becomes aware, including breaches of Protected Health Information as required by the applicable Privacy Law and any security incident of which it becomes aware; and (4) ensure that any ArbiMed Representative that creates, receives, maintains, or transmits Protected Health Information on behalf of ArbiMed agrees to the same restrictions, conditions, and requirements that apply to ArbiMed with respect to such information.

(f) The ArbiMed Software, Support Services, and Equipment (if applicable) will conform and function in all material respects with this Agreement and all documentation provided to, and representations and warranties made to, Customer regarding the same and in subsequent upgrades to the ArbiMed Software, Equipment (if applicable) and the Support Service. Customer's sole and exclusive remedy for ArbiMed's breach of this warranty shall be that ArbiMed shall use commercially reasonable efforts to correct any errors or implement whatever measures are necessary to achieve such material functionality within a reasonable period of time. However, ArbiMed shall have no obligation with respect to this warranty claim unless notified of such event within ten (10) Business Days of the first material functionality problem. Further, ArbiMed shall have no obligation with respect to this warranty claim, and Customer may not terminate the Agreement under Section 9.2, where any alleged nonconformity is due to negligence on the part of Customer as reasonably determined by the Parties after investigation and analysis by ArbiMed's support center. ArbiMed does not warrant that the ArbiMed Software and/or any Services associated with the ArbiMed Software will be free of non-material errors, bugs, or minor interruption.

5.2 Representations, Warranties, and Covenants of Customer. Customer hereby represents, warrants, and covenants as of the Effective Date:

(a) If the Customer is a natural person, the Customer represents that he or she has the requisite capacity to execute and deliver this Agreement, to perform his or her obligations hereunder and to consummate the transactions contemplated hereby.

(b) If the Customer is a legal entity, the Customer represents that it is a company or corporation duly organized, validly existing, and in good standing under the Laws of the jurisdiction in which it is incorporated, and has full company or corporate power and authority

and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as contemplated in this Agreement.

(c) Customer has obtained all necessary government authority, permits, licenses, accreditations, certifications, and all necessary legal and operational authorizations related to its business operations including, but not limited to, other third-party permissions, clearances, and consents to perform its obligations under this Agreement.

(d) That any use of the ArbiMed Software (including the Support Services) by Customer or by Customer's Representatives, is and will be at all times in accordance with the terms set forth in this Agreement, its attachments and exhibits, and the Law.

(e) Customer will obtain access to the internet and/or world wide web, either directly or through devices that access Web-Based Content, and Customer will have all the necessary equipment for such purposes. Further, Customer represents that Customer will run the ArbiMed Software in an appropriate client environment and will make (and maintain) such connection in accordance with the applicable technical requirements needed for the ArbiMed Software to operate successfully.

(f) Customer will obtain and maintain all computer hardware, any software, and communications equipment required for use of the ArbiMed Software, including any operating system software, database software, or third-party applications software.

(g) Customer will implement, maintain, and update all necessary and proper procedures and software necessary to protect the ArbiMed Software against computer infection, viruses, worms, Trojan horses, malware, and other code that has an infectious and destructive potential.

(h) Customer will take reasonable backup precautions, as ArbiMed will not be responsible for loss of data or documentation not attributable to the ArbiMed Software.

(i) Customer will immediately notify ArbiMed or ArbiMed's Representatives of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Customer Data;

(j) Customer will comply with all applicable Laws in connection with its use of the ArbiMed Software, including without limitation those related to data privacy which include each and every single duty, obligation, and responsibility that Customer must comply with, and which are contained in laws, statutes, and regulations such as the Federal Trade Commission Act, the Health Insurance Portability and Accountability Act (known as HIPAA), Standards for Privacy of Individually Identifiable Health Information, Security Standards for the Protection of Electronic Protected Health Information, HIPAA Omnibus Rule, Health Information Technology for Economic and Clinical Health Act, including laws, statutes, and regulations of Customer's state of residence (collectively, "**Privacy Laws**"). The obligations and responsibilities contained in the Privacy Laws and to which Customer may be subject to include, but are not limited to, the obligation to: (a) inform Customer Users and/or Customer's patients regarding the collection, use, and processing of their data pursuant to this Agreement, and to ensure that they have given any necessary consent to such collection, use, and processing as required by the applicable Privacy

Laws; (b) have a Notice of Privacy Practices in place describing how protected health information (if any) is kept private and how the Customer will use, share, and protect the privacy of Customer's patient data, and what Customer patients' rights are; (c) establish and/or implement necessary administrative, physical, and technical safeguards to keep the Customer patients' Personal Identifiable Information and/or Protected Health Information secure; (d) immediately notify ArbiMed of any limitation(s) in the Notice of Privacy Practices to the extent that such limitation may affect ArbiMed's use or disclosure of Protected Health Information; (e) immediately notify ArbiMed of any changes in, or revocation of, the permission of Customer's Patient to use or disclose his or her Protected Health Information, to the extent that such changes may affect ArbiMed's use or disclosure of Protected Health Information; (f) immediately notify ArbiMed of any restriction on the use or disclosure of protected Health Information that Customer has agreed to or is required to abide by, to the extent that such restriction may affect ArbiMed's use or disclosure of Protected Health Information. In addition, Customer shall not request ArbiMed to use or disclose Protected Health Information in any manner that would not be permissible under any applicable Privacy Law if done by Customer.

(k) Customer may not remove or export from the United States or allow the export or re-export of the ArbiMed Software or the Support Services, or any direct product thereof, in violation of any restrictions, laws, or regulations of any United States or foreign agency or authority.

5.3 Mutual Representations, Warranties, and Covenants. ArbiMed and Customer each hereby represent, warrant, and covenant to one another as follows, as of the Effective Date, that the execution, delivery, and performance of this Agreement by them does not (a) conflict with any agreement, instrument or understanding, oral or written, to which it is a party and by which it may be bound, or (b) violate any Laws of any governmental authority having jurisdiction over it.

5.4 No other Representations or Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, **ARBIMED WILL WORK TO ENSURE, TO THE BEST OF OUR ABILITY, THAT THE ARBIMED SOFTWARE WILL BE OPERATIONAL AND SECURE. HOWEVER, ARBIMED MAKES NO REPRESENTATION OR WARRANTY (1) THAT CUSTOMERS USE OF THE ARBIMED SOFTWARE WILL BE 100% SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, (2) THAT CUSTOMER WILL BE ABLE TO HAVE ACCESS IN EVERY COUNTRY, ESPECIALLY IN THE ONES WHERE THERE IS INTERNET CENSORSHIP, (3) THAT THE SERVICE WILL ALWAYS MEET CUSTOMER'S SPECIFIC REQUIREMENTS, (4) THAT THE ARBIMED SOFTWARE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS, OR DATA NOT PROVIDED BY ARBIMED OR (5) ANY STORED CUSTOMER DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED IN THIS ARTICLE 5 ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY ARBIMED. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN THIS ARTICLE 5, THE ARBIMED SOFTWARE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS AND IS FOR COMMERCIAL USE ONLY. FURTHER, EXCEPT AS EXPRESSLY**

STATED IN THIS AGREEMENT, ALL REPRESENTATIONS, AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED.

5.5 Remedies. Without limiting Customer's rights and remedies available under contract, at law, or in equity, in the event of a breach of warranty by ArbiMed, Customer will, upon becoming aware of any breach, promptly notify ArbiMed of the breach and any associated details reasonably requested by ArbiMed in its attempt to remedy the breach, and ArbiMed shall immediately commence to cure such breach, including through the provision of all applicable Support Services in accordance with the time requirements set forth in Exhibit B to this Agreement.

5.6 Remedies Not Exclusive; Survival. The remedies in this Section shall not be exclusive remedies and each Party shall retain all rights and remedies available to them under this Agreement and at law, equity, and statute. This Article shall survive expiration and termination of this Agreement and continue in full force and effect, as between ArbiMed and Customer.

ARTICLE 6

LIMITATION OF LIABILITY

EXCEPT WITH RESPECT TO ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY BREACH OF ARTICLE 8 OR ANY CLAIM SUBJECT TO INDEMNIFICATION PURSUANT TO ARTICLE 7, IN NO EVENT SHALL ANY PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER FOR INDIRECT OR CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES BASED UPON LOST PROFITS, RELIANCE OR EXPECTATION, BUSINESS INTERRUPTION, LOST BUSINESS, LOST SAVINGS, LOST REVENUE, LOSS OF RECORDS, OR DATA (OR OTHER INTANGIBLE PROPERTY), OR LOSS OF USE OF EQUIPMENT, FOR ANY ACTS OR FAILURE TO ACT UNDER THIS AGREEMENT, INCLUDING ANY TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBLE EXISTENCE OF SUCH DAMAGES. The limitations of liability reflect the allocation of risk between the Parties. The limitations specified in this Article 6 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

ARTICLE 7

INDEMNIFICATION

7.1 ArbiMed Indemnity. ArbiMed shall defend, indemnify, and hold harmless Customer and its Affiliates and Representatives (each, a "**Customer's Indemnitee**") from and against any and all liabilities, losses, costs, and expenses (collectively, "**Loss**") suffered or incurred by them in connection with any claim brought by a Third Party that arises or is alleged to arise from or in connection with:

- (1) any breach of representation or warranty made by ArbiMed under this Agreement; and/or
- (2) any gross negligence or willful misconduct by ArbiMed, its Affiliates, or

any of their respective Representatives with respect to the performance of this Agreement; and/or

(3) any claim that the ArbiMed Software or the Support Services (and any component of any of the foregoing) infringes, violates or misappropriates any Intellectual Property of a Third Party; and/or

(4) any claim that the ArbiMed Software or the Support Services (and any component of any of the foregoing) infringes or violates any Privacy Law.

7.2 Customer Indemnity. Customer shall defend, indemnify, and hold harmless ArbiMed and its Affiliates and Representatives (each, an “**ArbiMed’s Indemnitee**”) from and against any Loss suffered or incurred by them in connection with any claim brought by a Third Party that arises or is alleged to arise from or in connection with:

(1) any breach of representation or warranty made by Customer ArbiMed under this Agreement; and/or

(2) any gross negligence or willful misconduct by Customer, its Affiliates, or any of their respective Representatives with respect to the performance of this Agreement.

7.3 Indemnification Procedures. The Person or Persons claiming indemnity under this Article 7 (the “**Indemnified Party**”) shall give written notice to the Party from whom indemnity is being sought (the “**Indemnifying Party**”) promptly after learning of such claim. The Indemnified Party shall provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party’s expense, in connection with the defense of the claim for which indemnity is being sought. The Indemnifying Party shall have the right, but not the obligation, to assume and conduct the defense of the claim with counsel of its choice; provided, the Indemnified Party may participate in and monitor such defense with counsel of its own choosing at its sole expense. The Indemnifying Party shall not settle any claim without (a) first consulting with the Indemnified Party, and (b) unless the settlement involves only the payment of money by the Indemnifying Party, obtaining the prior written consent of the Indemnified Party, not to be unreasonably withheld, or delayed. The Indemnified Party shall not settle or compromise any such claim without (x) first consulting with the Indemnifying Party, and (y) obtaining the prior written consent of the Indemnifying Party. If the Indemnifying Party does not assume and conduct the defense of the claim as provided above, (i) the Indemnified Party may, using counsel of its choice, defend against, and settle, or resolve, such claim in any manner the Indemnified Party may deem reasonably appropriate, and (ii) the Indemnifying Party shall remain responsible to indemnify the Indemnified Party as provided in this Article 7, provided, that in such instance such indemnity shall also include the reasonable legal fees and reasonable out-of-pocket costs incurred by the Indemnified Party in connection with so defending itself in the absence of a defense being provided by the Indemnifying Party.

7.4 Survival. This Article shall survive assignment, expiration, and termination of this Agreement and shall continue in full force and effect as between ArbiMed and Customer.

ARTICLE 8

CONFIDENTIALITY

8.1 Confidential Information. As used in this Agreement, the term “Confidential Information” means the following:

(a) any and all secret, confidential or proprietary information, know-how, data or materials, whether in written, oral, graphic, video, computer or other form, which is disclosed or made available by a Party or an Affiliate or Representative of such Party (the “**Disclosing Party**”) to the other Party or an Affiliate or Representative of such other Party (the “**Receiving Party**”) pursuant to this Agreement (including Confidential Information disclosed prior to the Effective Date hereof or which arises as a result of this Agreement), and which: (i) if disclosed in written, graphic, electronic or other tangible form, is labeled as confidential or proprietary, (ii) if disclosed orally or visually, is identified as confidential or proprietary at the time of disclosure and is confirmed to be confidential or proprietary by the Disclosing Party in writing to the Receiving Party within thirty (30) calendar days of such disclosure, (iii) by its nature, should reasonably be considered to be confidential or proprietary; or (iv) is specifically designated as Confidential Information herein; and

(b) any information concerning this Agreement; and

(c) includes but is not limited to that which relates to business plans, strategic plans or business methods that derive economic value from not being generally known to other persons or easily ascertainable by other persons, business policies, research, product plans, patient data or information, Personally Identifiable Information, Protected Health Information, product pricing or product strategy, services, service pricing or service strategy, manufacturing information, actual or proposed alliance partners, actual or proposed vendors, vendor offerings and pricing, actual or proposed customers, customer usage and customer purchasing potential, employee and consulting relationship information, actual or proposed markets, sales and marketing materials, plans and methods, specifications, shop-practices, software, developments, inventions (whether or not patented), product names or marks, trade secrets, technologies, discoveries, and any other intellectual property (whether or not registered), processes, designs, drawings, engineering, hardware configuration information or finance, accounting or financial plans and forecasts, compilations, formulas, devices, methods, prototypes, techniques, procedures, protocols, programs, records, and databases.

8.2. Exceptions to Confidential Information. Confidential Information shall not include any information or materials to the extent the Receiving Party can reasonably demonstrate through its contemporaneous written records that such information or materials are or have been:

(c) part of public domain at the time of its creation or receipt by the Receiving Party or which thereafter becomes part of the public domain other than as a result of a breach of this Agreement or the obligations of confidentiality under this Agreement; or

(d) is approved in writing by the Disclosing Party for release; or

(e) independently developed by the Receiving Party or its Affiliates or Representatives without use of or reference to the Confidential Information of the Disclosing Party; or

(f) received from a Third Party who, to the knowledge of the Receiving Party, is not under any obligation of confidentiality towards the Disclosing Party with respect to such information.

The Receiving Party has the burden of proving any of the above exceptions. The Disclosing Party has the right to inspect the Receiving Party's documentary evidence upon which the Receiving Party bases its claim that Confidential Information is within any of the above exceptions.

8.3 Confidentiality Obligations. Each Party shall keep all Confidential Information received from or on behalf of another Party with the same degree of care with which it maintains the confidentiality of its own Confidential Information, but in all cases no less than a reasonable degree of care. Each Party, in their position as a Receiving Party hereunder, shall, during the Term and for five (5) years thereafter:

(a) not use the Disclosing Party's Confidential Information other than as strictly necessary to exercise its rights and perform its obligations under this Agreement; and

(b) maintain the Disclosing Party's Confidential Information in strict confidence and, subject to Section 8.4, not disclose the Disclosing Party's Confidential Information to any Person without the Disclosing Party's prior written consent, provided, however, the Receiving Party may disclose the Confidential Information to its Representatives who: (a) have a need to know the Confidential Information for purposes of the Receiving Party's performance, or exercise of its rights concerning the Confidential Information, under this Agreement; (b) have been apprised of this restriction; and (c) are themselves bound by written nondisclosure agreements or ethical obligations of confidentiality at least as restrictive as those set forth in this Section, provided further that the Receiving Party shall be responsible for ensuring its Representatives' compliance with, and shall be liable for any breach by its Representatives of the confidentiality and non-disclosure obligations set forth herein.

8.4. Permitted Disclosure and Use. Notwithstanding Section 8.3, a Party may disclose Confidential Information belonging to another Party if and only to the extent such disclosure is reasonably necessary to comply with applicable laws, government requirements, or court orders, provided that the Receiving Party shall promptly notify the Disclosing Party of its notice of any such requirements and provide the Disclosing Party a reasonable opportunity to seek a protective order or other appropriate remedy or waive its rights under this Article 8; and disclose only the portion of Confidential Information that is legally required to furnish.

8.5 Equitable Relief. ArbiMed and Customer agree that disclosure of ArbiMed's or Customer's Confidential Information by a Receiving Party, other than as permitted by this Article, will cause irreparable damage to ArbiMed or Customer, and therefore, in addition to all other remedies available at law or in equity, ArbiMed or Customer shall have the right to seek equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such

unauthorized use. ArbiMed and Customer shall be liable under this Agreement to each other for any use or disclosure in violation of this Article by such Party, its subcontractors or its or their respective Personnel, attorneys, accountants or other advisors. This Section shall survive expiration and termination of this Agreement and continue in full force and effect, as between ArbiMed and Customer.

8.6 Statistical Data. Both the Customer and ArbiMed expressly agree that ArbiMed, its Third Party Service Providers and/or business partners may collect, compile, use, share, transfer, and/or analyze relevant data related to the ArbiMed Software, excluding Customer Data and PHI – and its use by Customer, its utility, and/or any services provided by ArbiMed in connection with the ArbiMed Software, provided such data is collected, compiled, used, shared, transferred, and/or analyzed only for statistical or service quality purposes, and that such data cannot be associated with Customer’s name, Customer patients’ identity, trademark, logo, business name, trade name, proprietary and Confidential Information, or any other information that may allow a Third Party to know Customer’s and Customer patients’ identity and/or to associate Customer with said data.

8.7 Notification. The Receiving Party shall notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of Disclosing Party’s Confidential Information and will cooperate with the Disclosing Party in any reasonably requested fashion to assist Disclosing Party to regain possession of such Confidential Information and to prevent its further unauthorized use or disclosure.

8.8 Survival. The obligations and prohibitions contained in this Article 8, as they apply to Confidential Information, shall survive the expiration or termination of this Agreement for a period of five (5) years.

ARTICLE 9

TERM AND TERMINATION OF THIS AGREEMENT

9.1 Term. Unless terminated under this Article, the Agreement will be valid and effective from the Effective Date and throughout the period of time covered by Customer’s Subscription Fee payments (*e.g.*, a year in case of one year worth of subscription fee payments, more if payments for a longer term is made) (the “Term”). Absent written notice to the contrary, the Agreement will renew automatically for the same period covered by the payment of the Subscription Fees. In the event Customer does not wish to renew the Agreement, Customer shall give ArbiMed a 30-day notice prior to the expiration of the Term.

9.2 Termination of this agreement by Customer. Customer may, by 90-day prior and written notice to ArbiMed, terminate this Agreement (i) at any time, for any reason, without penalty or (ii) if ArbiMed materially defaults in the performance of its obligations under this Agreement, and such default has not been remedied or cured within thirty (30) days after Customer gives ArbiMed written notice specifying the default. Termination for convenience pursuant to this Section, will not relieve Customer from its obligation to pay any and all Fees that are owed by Customer under this Agreement up to the date of termination. If Customer terminates this Agreement as permitted in this Section, Customer will receive a prorated refund of the pre-payment amount. Termination is not an exclusive remedy, and all other remedies will be available whether or not termination occurs.

9.3 Termination of this agreement by ArbiMed. ArbiMed may, by prior and written notice to Customer, terminate this agreement only if Customer materially defaults in the performance of or compliance with its obligations under this Agreement, or fails to issue payment when due, and such default has not been remedied or cured within ten (10) days after ArbiMed gives Customer written notice specifying the default or breach. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

9.4 Other grounds for termination. Either party may, by notice to the other Party, immediately terminate the Agreement if the other Party becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any insolvency action or proceeding, external administration, or ceases to continue business for any reason, or is unable to perform a material obligation under this Agreement for 30 days or more due to Force Majeure.

9.5 Effect of Termination. Upon termination of this Agreement at the end of the 90-day prior notice period: (1) ArbiMed shall (a) immediately refund to Customer any fees that have not accrued by the date of termination and (b) deliver to it all copies of Customer Data and other Customer property in a format and medium mutually agreed upon by the Parties that will allow Customer to either use the returned information at no additional expense or keep the expenses that may be incurred at a minimum and reasonable level; and (2) Customer shall discontinue the use of the ArbiMed Software and shall return to ArbiMed all copies of the ArbiMed Software and ArbiMed Software documentation, and will destroy, and document in writing such destruction of any embodiments of these materials stored in or on a reusable electronic or similar medium, including memory, USB, and any other electronic or material form.

9.6 Survival. The provisions of Sections 3, 5, 6, 7, 8, 9, 10, and 11 of this Agreement will survive and continue in full force and effect notwithstanding the termination or expiration of this Agreement.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Disputes. The Parties recognize that, from time to time, disputes may arise as to certain matters which relate to a Party's rights and/or obligations in connection with this Agreement. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising under this Agreement in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Article 10 to resolve any controversy or claim arising out of, relating to or in connection with this Agreement prior to the pursuit of litigation.

10.2 Dispute Resolution. In the event of a dispute under this Agreement, the Parties will refer the dispute to their respective designated Representatives for discussion and resolution, who shall attempt in good faith to resolve such dispute. If such executive officers are unable to resolve such a dispute within thirty (30) days of the dispute being referred to them, either Party shall be free to initiate proceedings under Section 11.8.

10.3 Injunctive Relief. Nothing herein may prevent a Party from seeking a preliminary injunction or temporary restraining order, in any court of competent jurisdiction, so as to prevent any Confidential Information from being disclosed in violation of an applicable confidentiality agreement entered into by the Parties or to prevent the threat of imminent harm.

10.4 Continued Performance. Unless otherwise agreed in writing, the Parties will continue to provide service and honor all other commitments under this Agreement during the course of dispute resolution pursuant to the provisions of this Article 10, except to the extent such commitments are the subject of such dispute, controversy or claim.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1 Assignment; Binding Effect. This Agreement shall not be assignable by any Party hereto without the prior written consent of the other Party; provided, however, either Party may assign this Agreement without consent to (i) an Affiliate of that Party; or (2) any successor by merger, de-merger, or sale of substantially all of the assets to which this Agreement relates.

11.2 Remedies. Each Party acknowledges that a breach by it of any of the terms set forth in Article 8 (Confidentiality) of this Agreement would cause irreparable harm to the other Party for which the other Party could not be adequately compensated by money damages. Accordingly, each Party agrees that, in addition to all other remedies available to it in an action at law, in the event of any breach or threatened breach by the other Party of the terms of this Agreement, the nonbreaching Party will, without the necessity of proving actual damages or posting any bond or other security, be entitled to seek temporary and permanent injunctive relief, including, but not limited to, specific performance of the terms of this Agreement.

11.3 Expenses. Except as expressly specified herein, each Party shall bear its own expenses with respect to this Agreement.

11.4 Notices. Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered personally, or may be sent by facsimile, e-mail, expedited delivery or certified mail, return receipt requested, to the following addresses, unless the Parties are subsequently notified of any change of address in accordance with this Section.

| | |
|---------------|--|
| If to ArbiMed | ArbiMed, Inc. Attn: Sales Manager 9400 Grogan's Mill Road, Suite 200 The Woodlands, Texas, 77380 Phone: (877) 886-9445 Email: info@arbimed.com |
|---------------|--|

| | |
|----------------|---|
| If to Customer | Practice Name Address / Suite # City, St Zip Phone: |
|----------------|---|

All notices, requests, claims, demands and other communications hereunder shall be deemed to have been duly given (a) when received if delivered personally, (b) when transmitted by facsimile (with confirmation of successful transmission), (c) upon receipt, if sent by registered or certified mail (postage prepaid, return receipt requested) and (d) the day after it is sent, if sent for next-day delivery to a domestic address by overnight mail or courier.

11.5 Change of address. Each Party may change its address at any time and/or designate that copies of all the notices be directed to another person at another address, by giving notice of the change to all Parties no later than 30 days after relocation.

11.6 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, such determination shall not affect the enforceability of any others or of the remainder of this Agreement; and in connection with such term, provision, covenant or restriction of this Agreement which is held invalid, void, unenforceable or against regulatory policy, the Parties shall negotiate in good faith with a view to the substitution therefor of a suitable and equitable solution in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid term, provision, covenant or restriction and, absent any agreement by the Parties, such court of competent jurisdiction or other authority shall substitute therefore such term, provision, covenant or restriction as is legal, valid and enforceable but otherwise similar to the invalid term, provision, covenant or restriction.

11.7 Entire Agreement. This Agreement is the entire agreement of the Parties hereto, superseding all negotiations, prior discussions and preliminary agreements made prior to the Effective Date.

11.8 Governing Law; Jurisdiction; Venue. This Agreement (including any claim or controversy arising out of or relating to this Agreement) shall be governed by the Laws of the State of Texas without regard to conflict of law principles that would result in the application of any Law other than the Laws of the State of Texas.

11.9 Force Majeure. Neither Party will be liable for any delays or failures in performance due to: (a) civil commotion, riot, terrorism, invasion, war or preparation for war; (b) fire, explosion, storm, flood, earthquake, subsidence, epidemic, or other natural physical disaster; (c) unavailability of the use of railways, shipping, aircraft, motor transport, or any other means of public or private transport; (d) public unavailability of Internet connectivity to end users; or (e) any other similar event that renders performance of this Agreement impossible. Each Party will give the other Party notice as soon as possible upon the commencement and conclusion of a force majeure event in accordance with this Section.

11.10 Use of Trademarks. ArbiMed may use Customer's business name, trademark, and logos in its marketing tools, media release, public announcements, or public disclosure, including in any promotional or marketing materials, web sites, customer lists, referral lists, or business presentations. Notwithstanding the foregoing, Customer may require ArbiMed to cease any use of Customer's business names, trademarks, and logos if Customer reasonably considers that ArbiMed's use of the business name, trademark, and logos is derogatory, defamatory, or detrimental to Customer or in any way damages Customer's business or reputation.

11.11 Continuity of Service. In the event of a Change of Control, or any other acquisition of ArbiMed's business or the rights associated with the ArbiMed Software, ArbiMed will make appropriate provision for the continuity of the services related to such ArbiMed Software, at the contracted price in effect at that time, in order to ensure they remain uninterrupted throughout the duration of this Agreement. Customer has an absolute right not to be forced either to enter into contracts with the acquiring entity nor be instructed by such entity as to the time, place, manner in which customers should procure their products, supplies, medications, and/or and other services. ArbiMed will take the proper steps so that the acquiring entity is timely informed of such rights in order for them to be respected and preserved. This same guarantee of uninterrupted continuity of the ArbiMed Software services, at the contracted price in effect at that time, also applies if ArbiMed elects to start its own GPO or join a GPO and the Practice declines participation in such GPO.

11.12 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

11.13 Construction. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against a drafting Party shall not be employed in the interpretation of this Agreement.

11.14 Interpretation.

- (a) When a reference is made in this Agreement to an Article, Section, Exhibit, Schedule, Recital or Preamble, such reference is to an Article, Section, Exhibit, Schedule, Recital or Preamble of or to this Agreement unless otherwise indicated.
- (b) The words "hereof," "herein," "hereto" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole, but shall not include the non-binding Exhibit hereto, and not to any particular provision of this Agreement.
- (c) The terms defined in the singular have a comparable meaning when used in the plural, and vice versa.
- (d) Words of one gender include the other gender.
- (e) References to any Person are also to its successors and permitted assigns.
- (f) The term "Dollars" and "\$" means United States Dollars.
- (g) The word "including" means "including without limitation" and the words "include" and "includes" have corresponding meanings.
- (h) References herein to an agreement, law or regulation include such agreement, law or regulation as amended, restated, supplemented, or otherwise modified from time to time unless otherwise specified.

11.15 Amendments; Modifications; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the waiving Party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power,

or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

11.16 Equitable Relief. In any claim for equitable relief, each party acknowledges that a breach by the other party of this Agreement may cause the non-breaching party irreparable harm, for which an award of damages would not be adequate compensation and, in the event of such a breach or threatened breach, the non-breaching party shall be entitled to equitable relief, including in the form of a restraining order, orders for preliminary or permanent injunction, specific performance, and any other relief that may be available from any court, and the parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such relief. These remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available under this Agreement at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

11.17 No Third-Party Beneficiaries. Except for the indemnification rights under this Agreement of any ArbiMed Indemnitee or Customer Indemnitee in their respective capacities as such, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

11.18 Relationship of the Parties. This Agreement is not intended by the Parties to constitute or create a joint venture, pooling arrangement, partnership, employment relationship, or formal business organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth herein and therein. No Party will have any right, power or authority, nor will they represent themselves as having any authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of another Party, or otherwise act as an agent for another Party for any purpose.

11.19 Counterparts. This Agreement may be executed in any number of counterparts (including by facsimile, by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document), all of which will be one and the same agreement.

11.20 Enforcement. In the event that any Party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorney's fees.

EXHIBIT A

SUPPORT SERVICES RESPONSE TIME AND RESOLUTION GOALS

1.1 Severity 1: The Production system / application is down, seriously impacted and there is no reasonable workaround currently.

Upon confirmation of receipt, the ArbiMed will begin continuous work on the issue, and a customer resource must be available at any time to assist with problem determination.

Once the issue is reproducible or once we have identified the ArbiMed Software defect, the ArbiMed's support will provide reasonable effort for workaround or solution within 24 hours.

1.2 Severity 2: The system or application is seriously affected. The issue is not critical and does not comply with the Severity 1 conditions. There is no workaround currently available or the workaround is cumbersome to use.

ArbiMed will work during normal business hours to provide reasonable effort for workaround or solution within 7 business days, once the issue is reproducible.

1.3 Severity 3: The system or application is moderately affected. The issue is not critical and the system has not failed. The issue has been identified and does not hinder normal operation, or the situation may be temporarily circumvented using an available workaround.

ArbiMed will work during normal business hours to provide reasonable effort for workaround or solution within 10 business days, once the issue is reproducible.

1.4 Severity 4: Non-critical issues.

ArbiMed will seek during normal business hours to provide a solution in future releases of the Service.