Spacelabs Healthcare
Subscription Services and Software Terms

1. <u>Agreement</u>. The terms of the Customer Quotation and these terms (collectively the "Agreement") cover the provision of Software (as defined below) and services on a subscription basis by Spacelabs Healthcare (the "Subscription Services"). Any additional or different terms, including terms in any purchase order, will be of no effect unless expressly accepted in writing by Spacelabs. Spacelabs' performance will not, under any circumstances, be deemed Spacelabs' acceptance of any of the terms and conditions contained in any Customer document. Customer's issuance of a purchase order or other Customer document to procure the Subscription Services, or use of the Subscription Services, will be deemed to constitute Customer's subscription to the Subscription Services and acceptance of this Agreement.

2. <u>Grant of Rights</u>.

2.1. The term "Software" means firmware, standalone software, and updates, upgrades, or new versions of such Software as are provided by Spacelabs to Customer. Subject to the terms and conditions of this Agreement, and subject to full and timely payment of all subscription and other fees owed hereunder, Spacelabs hereby grants to Customer and Customer hereby accepts a limited, non-exclusive, non-transferable, and revocable right to access and use the Subscription Services, the Software, and the associated Documentation (as defined below), in each case for Customer's own internal business operations during the Term of this Agreement. Any person who uses or accesses the Subscription Services, the Software or any component thereof (including via a user interface) shall constitute a user of the Subscription Services. Customer may access and use the Software and Subscription Services by not more than the number of combined enterprise and limited use users specified in the Customer Quotation ("Authorized Users"). Customer shall take all steps necessary to ensure that no person or entity shall have unauthorized access to or use of the Subscription Services or the Software.

2.2. The terms of this Agreement apply to all enhancements, modifications, variations, revisions, updates, supplements, add-on components, and replacements for the Software and Subscription Services (collectively, "Updates") that Spacelabs may provide or make available for the Software and Subscription Services, subject to any additional terms provided by Spacelabs applicable to such Updates. Spacelabs has no obligation to, and nothing in this Agreement may be construed to require Spacelabs to create Updates.

2.3. Where Spacelabs will host the Software and Customer Data, Customer will receive the Subscription Services and access and use the Software only via remote access to an environment or environments hosted by Spacelabs or one or more third parties designated by Spacelabs.

3. <u>Term; Deactivation, and Termination</u>.

3.1. This Agreement shall take effect on the first clinical use of the Subscription Services or Software by Customer and will continue on an annual year to year subscription basis (each such period, a "Subscription Period") unless terminated or canceled in accordance with these terms (the "Term").

3.2. Spacelabs may, in its reasonable determination, deactivate and/or temporarily suspend access to the Subscription Services or a portion thereof, if continued use of the Subscription Services by Customer or its Authorized Users may result in harm to the Subscription Services (including the security of the systems used to provide the Subscription Services) or other Spacelabs customers, or the rights of third parties.

3.3. Either party may terminate this Agreement for convenience at the end of the then-current Subscription Period by providing written notice to other of its intent not to renew at least thirty (30) days prior to the last day of the then-current Subscription Period.

3.4. Either party may terminate this Agreement for cause upon written notice to the other party of that party's failure to perform any of its duties or obligations hereunder and failure to cure such default within 30 days' of written notice from the non-defaulting party specifying the occurrence or existence of the default.

3.5. Upon the termination of this Agreement: (i) Customer will immediately deliver to Spacelabs all Documentation(as defined below) provided by Spacelabs in connection with the Subscription Services; (ii) refrain from further use of the Subscription Services; and (iii) pay all fees due for use of the Subscription Services through termination.

3.6. If Customer requires access to the Subscription Services to export and retrieve its Customer Data after the effective date of termination, Customer may extend the Term for up to 90 days by notifying Spacelabs at least 30 days prior to the effective date of termination and paying the applicable fees for such extension. Subject to the foregoing, Spacelabs will have no obligation to maintain or provide any Customer Data.

4. <u>Price; Payment</u>.

4.1. The fee for the Subscription Services and Software licensing is as set forth in the Spacelabs Customer Quotation. Such fee shall be payable in advance for each 12-month period during the Term with payment due thirty (30) days after date of invoice. If Customer orders any Subscription Services additions or upgrades during the Term, the price for such additions or upgrades will be prorated for the remaining portion of the then current year of the Term.

4.2. If Customer's actual usage of the Software or Subscription Services during any month of the Subscription Period exceeds the number of Authorized Users provided for by the Agreement, Customer will be invoiced and shall pay on a monthly basis for such overage users at 20% more than the monthly per Authorized User rates ("Overage Fees").

4.3. Customer shall pay Spacelabs interest on past-due amounts payable under this Agreement at a rate equal to one and one-half percent (1.5%) for each month payment remains delinquent. All fees are accountable and payable in U.S. Dollars. Spacelabs reserves the right to suspend or terminate this Agreement and/or Customer's access to the Subscription Services and Software in the event Customer's account becomes delinquent. Customer's obligation to pay the fees for the Subscription Services and Software will continue during any such period of suspension. Spacelabs further reserves the right to impose a reconnection fee in the event Customer's access is suspended and subsequently reconnected. Customer agrees to pay collection expenses and legal fees incurred by Spacelabs in collecting past due balances. Subscription Services upgrades and add-ons may be subject to an additional charge.

5. Support and Other Services

5.1. Spacelabs will provide Customer with one copy of the then-current standard documentation for the Subscription Services and the Software (the "Documentation"). Customer may make one copy of the Documentation for each Authorized User. Except as provided in this Section or as otherwise required by law, Customer may not copy the Software, Documentation, or any other Confidential Information (as defined below) of Spacelabs in whole or in part.

5.2. Spacelabs will use commercially reasonable efforts to provide the Subscription Services 24 hours a day, seven days a week, except for: (i) planned maintenance; (ii) unscheduled maintenance necessary for the proper functioning of the Subscription Services; and (iii) any unavailability caused by circumstances beyond Spacelabs' reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Spacelabs employees), internet service provider failure or delay, or denial of service attack.

5.3. Spacelabs will use commercially reasonable security technologies in providing the Subscription Services. Where Spacelabs hosts Customer Data, will retain Customer Data on a secure server and maintain data recovery and data backup facilities in accordance with accepted industry practices.

5.4. Customer acknowledges and agrees that Customer's use of the Subscription Services is subject to all applicable laws and regulations. Customer acknowledges and agrees that the reliability, availability, integrity, and performance of resources accessed through the internet or other services connected to the Subscription Services are beyond the control of Spacelabs and are not warranted or supported by Spacelabs.

5.5. Spacelabs may change the Subscription Services at any time. If such changes to the Subscription Services materially diminish the functionality of the Subscription Services, Customer will have the right to terminate the subscription for the Subscription Services by providing written notice to Spacelabs within 10 days of the changes and will receive a prorated refund of the fees paid by Customer for such Subscription Services for the remainder of the subscription term. The termination right and refund described herein is Customer's sole and exclusive remedy for Spacelabs' change to the Subscription Services.

6. Customer Responsibilities.

6.1. Customer is responsible for obtaining and maintaining all computer or other hardware, software, communications or other equipment and any other infrastructure, services, facilities, or resources not supplied by Spacelabs and needed to access and use the Software and Subscription Services ("Customer Equipment") and for all problems, conditions, delays, delivery failures, and all other loss or damage arising from or relating to such Customer Equipment. Customer will maintain commercially reasonable security standards for its and its Authorized Users' use of the Software and Subscription Services, including without limitation the use of regular required password changes.

6.2. Customer will not, and will not permit any third party or Authorized User to: (i) copy, trace, disassemble, decompile, modify, make derivative works based on, or reverse engineer the Subscription Services, Software, or Documentation; (ii) copy or transfer the Subscription Services, Software, or Documentation or any part thereof, except as expressly permitted by this Agreement; (iii) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Subscription Services, Software, or Documentation available to any third party (other than Authorized Users); (iv) use the Subscription Services to transmit any content, data, or information that is unlawful, defamatory, or invasive of another's privacy right; (v) infringe any intellectual property rights when using the Subscription Services; (vi) interfere with or disrupt the integrity or performance of the Subscription Services; (vii) send or store material containing software viruses, worms,

Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (viii) circumvent or disclose the user authentication or security of the Subscription Services or any related host, network, or account; or (ix) use Subscription Services applications other than those specifically identified in the Customer Quotation, even if technically possible.

6.3.   Customer is responsible for all activity occurring under Customer's Authorized User accounts.

7.   <u>Customer Data</u>.

7.1.   The term "Customer Data" means: (i) any content, materials, data, and information that Customer or its Authorized Users enter into the Subscription Services; and (ii) Customer-specific data that is derived from Customer's use of the Subscription Services (e.g. Customer-specific reports) as long as such derivative work is not a component of the Subscription Services itself or furnished by Spacelabs under this Agreement.

7.2.   As between Spacelabs and Customer, Customer owns all rights, title, and interest in and to all Customer Data, and will have sole responsibility for the legality, reliability, integrity, accuracy, and quality of the Customer Data. Customer grants to Spacelabs and its subcontractors and agents the nonexclusive right to process Customer Data for the sole purpose of and only to the extent necessary: (i) to provide the Subscription Services (including without limitation preparing backup copies or performing penetration tests); (ii) to verify Customer's compliance with the restrictions set forth in this Agreement if Spacelabs has a reasonable belief of Customer's non-compliance; and, (iii) as otherwise set forth in this Agreement.

7.3.   Spacelabs may utilize information concerning Customer and its Authorized User's use of the Subscription Services to improve Spacelabs products and services, to provide Customer with reports on its use of the Subscription Services, and to compile aggregate statistics and usage patterns by customers using the Subscription Services. Customer hereby permits Spacelabs to de-identify, anonymize, aggregate, copy, process, and display Customer Data to derive anonymous statistical and usage data and data about the functionality of the Subscription Services (provided such data cannot be used to identify Customer or its individual Authorized Users) for the purpose of combining or incorporating such data with or into other similar data and information available, derived or obtained from other customers (when so combined or incorporated, referred to as "Aggregate Data"). Spacelabs will be the owner of all right, title, and interest in and to Aggregate Data.

8.   <u>Data Processing; Data Export</u>.

8.1.   Spacelabs will not be responsible for the identification and interpretation of any applicable laws, regulations, and statutes that affect Customer's existing systems, programs, or Customer Data to which Spacelabs will have access during the Subscription Services. It is Customer's responsibility to: (i) ensure the systems, programs, and Customer Data meet the requirements of those laws, regulations and statutes; (ii) grant Spacelabs the rights, as necessary, to use, access, modify, and process Customer Data for Spacelabs to perform its responsibilities under this Agreement; (iii) obtain any necessary consents and take any other actions required by applicable laws, including but not limited to data privacy laws, prior to disclosing any of its employee information or other personal information or data to Spacelabs; (iv) be solely responsible for all content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup, and support and all copyright, patent, and trademark clearances in all applicable jurisdictions and usage agreements for any and all Customer Data. Spacelabs shall be relieved of its obligations to the extent Customer's failure to promptly obtain and provide such licenses or approvals adversely affect Spacelabs' ability to perform its obligations.

8.2.   Customer represents and warrants that it has collected and will maintain and handle all personal data contained in Customer Data in compliance with all applicable data privacy and protection laws, rules, and regulations. Customer authorizes Spacelabs to process the personal data contained within the Customer Data in accordance with the applicable data protection provisions. Customer has obtained all necessary consents and permissions to transfer the Customer Data in accordance with this Agreement.

8.3.   Where Spacelabs is hosting Customer Data and processing personal data on behalf of Customer within the meaning of Directive 95/46/EC and any implementing or successor legislation in any jurisdiction within the European Union or the Data Protection Act 2018 in the United Kingdom, including without limitation the General Data Protection Regulation (Regulation EU 2016/676) ("Applicable Data Protection Law"), this Section 8.3 will apply. Spacelabs agrees to process such personal data in accordance with Applicable Data Protection Law. In circumstances where the making available of the Subscription Services by Spacelabs to Customer involves either: (i) a transfer of personal data from a location in the European Economic Area ("EEA") to a location outside the EEA; or (ii) remote access to personal data located in the EEA from a location outside the EEA, Spacelabs shall ensure that measures are put in place to ensure adequacy of the transfer and protection of personal data as necessary to comply with Applicable Data Protection Law. In circumstances involving a transfer of personal data from a location in the EEA to a location outside of the EEA, all transfers shall only be made: (i) using contracts between the parties incorporating the European Commission's approved data export clauses (referred to in the Data Processing Addendum as the Model Clauses) but only for so long as such clauses are deemed to be in compliance with Applicable Data Protection Laws; (ii) to a country declared as ensuring an adequate level of protection, or (iii) as is otherwise consistent with Applicable Data Protection Law. For the avoidance of doubt, in the event of conflict between this Section 8.3 and any other provision of this Agreement which addresses data privacy matters, including the

Exhibits hereto and any applicable Data Processing Addendum that is in place between the parties, this Section 8.3 shall prevail.

9. **Limited Warranties.**

9.1. Spacelabs warrants that it either owns or has the right to provide the Subscription Services, and that the Subscription Services will substantially conform to the specifications stated in the Documentation. Spacelabs further warrants that any services provided in connection with the Subscription Services will be performed in a prompt, diligent, competent, and workmanlike manner. Customer's sole and exclusive remedy, and Spacelabs' entire liability for breach of the limited warranty in this Section, will be correction of the non-conformity or, if Spacelabs fails to correct the non-conformity after using reasonable commercial efforts, Spacelabs' termination of Customer's access to the non-conforming Subscription Services and refund of the fees paid by Customer for such Subscription Services for the remainder of the then-current Subscription Period (starting on the date Customer reported the non-conformity).

9.2. The limited warranties set forth herein shall not apply if: (i) Customer has misused or negligently used the Subscription Services or Software; (ii) Customer has failed to use the Subscription Services or Software in accordance with this Agreement or the Documentation; (iii) Customer has failed to report to Spacelabs a defect or error within ten (10) days of its first occurrence; (iv) Spacelabs is not granted prompt access to the equipment on which the Subscription Services are being used upon arrival of Spacelabs' service technician; (v) the defect or error was caused, in whole or in part, by a product, software, or part not originating from Spacelabs; (vi) Customer has failed to timely pay, in whole or in part, any invoice issued by Spacelabs; or (vii) Customer is otherwise in breach of this Agreement. The limited warranties set forth in this Agreement are made for Customer's benefit only. The remedies in this Section 9 are the sole and exclusive remedies for breach of these limited warranties.

9.3. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SPACELABS AND ITS SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTY OR REPRESENTATION THAT CUSTOMER'S ACCESS TO AND USE OF THE SUBSCRIPTION SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, AND SPECIFICALLY DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBSCRIPTION SERVICES OR SOFTWARE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

10. **Intellectual Property Rights; Ownership.** Except as expressly licensed to Customer herein, Customer agrees that all right, title, and interest in and to the Subscription Services, Software, and Documentation, including without limitation, all copyrights, trade secrets and other intellectual property rights pertaining thereto, will remain vested in Spacelabs; and as between Spacelabs and Customer, Spacelabs shall own and hold all intellectual property rights in and to the Subscription Services, Software, and Documentation. Spacelabs retains all rights not expressly granted herein.

11. **Limitation on Liability.**

11.1. SPACELABS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, RELIANCE OR SPECIAL DAMAGES OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR HARM TO BUSINESS OR LOSS OF PROFITS, REVENUE, BUSINESS, SAVINGS, DATA, OR USE, OR THE COST OF SUBSTITUTE PROCUREMENT, SUFFERED BY CUSTOMER) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER SPACELABS HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE. CUSTOMER HEREBY RELEASES SPACELABS AND EACH OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM ANY SUCH CLAIM.

11.2. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF SPACELABS TO CUSTOMER ARISING OUT OF OR BY REASON OF THIS AGREEMENT (INCLUDING BY REASON OF ANY BREACHES OR FAILURES TO PERFORM HEREUNDER) EXCEED THE AGGREGATE AMOUNT ACTUALLY PAID TO SPACELABS UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTH PERIOD ENDING ON THE FIRST DATE WHEN THE CLAIM(S) GIVING RISE TO SUCH LIABILITY WAS FIRST KNOWN OR SHOULD HAVE BEEN KNOWN TO CUSTOMER.

11.3. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY SET FOURTH IN THIS SECTION 11 AND IN THE OTHER PROVISIONS OF THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH SPACELABS WOULD NOT HAVE ENTERED INTO THE AGREEMENT. SPACELABS' PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

12. **Indemnity**

12.1. <u>Spacelabs Indemnity</u>. Spacelabs shall defend, indemnify, and hold Customer harmless from and against any third-party claim of United States copyright or trade secret infringement caused by the Subscription Services, Software, or Documentation, provided that Customer promptly notifies Spacelabs in writing of any such claim and allows Spacelabs to control, and fully cooperates with Spacelabs in, the defense of any such claim and all related settlement negotiations. In the event the Subscription Services, Software, or Documentation becomes, or in the opinion of Spacelabs is likely to become, subject to a valid claim of infringement under any United States intellectual property right of a third-party, Spacelabs may, at its sole option and expense, procure for Customer the right to continue using the affected Spacelabs Subscription Services, Software, or Documentation, replace or modify the affected Subscription Services, Software, or Documentation so that it does not infringe, or terminate this Agreement and refund and refund of the fees paid by Customer for such Subscription Services for the remainder of the then-current Subscription Period (starting on the date Customer reported the infringement). Spacelabs shall have no liability for and Customer shall indemnify and hold Spacelabs harmless from and against any claim based upon: (i) use of other than the then-current, unaltered version of the applicable Software; (ii) use, modification, operation, or combination of the Software, Subscription Services, or Documentation with non-Spacelabs programs, data, services, equipment, or documentation; (iii) compliance with Customer's designs, specifications, or instructions; (iv) any third-party software, or (v) Customer's breach of any of its obligations hereunder or misuse or modification of the Subscription Services, the Software or the Documentation. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF SPACELABS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO, ANY CLAIMS OF INFRINGEMENT OF THIRD-PARTY RIGHTS.

12.2. <u>Customer Indemnity</u>. Customer shall, at its expense, indemnify and hold harmless, and at Spacelabs' request defend, Spacelabs and its parents, and assigns (and its and their officers, directors, employees, representatives, and agents) from and against any and all claims, losses, liabilities, damages, settlements, expenses, and costs (including, without limitation, attorneys' fees and court costs) which arise out of or relate to: (i) any breach (or claim or threat thereof that, if true, would be a breach) of this Agreement by Customer, including, without limitation, any breach or alleged breach of any representation or warranty of Customer; (ii) any negligence or intentional misconduct of Customer or any officer, director, employee, representative, or agent of Customer; (iii) the negligence or intentional misconduct of any operator (or supervisor(s) of any operator) using the Software, Subscription Services, or Documentation; (iv) Customer Data (except to the extent such claim arises from Spacelabs' use of Customer Data in violation of this Agreement); or (v) any claim for intellectual property infringement or misappropriation related to any use or operation (including in combination with hardware or software not sourced by Spacelabs) of the Software, Subscription Services or Documentation to the extent that the Software, Subscription Services, or Documentation has been modified or altered by Customer in any way, or is used in combination with any other hardware or software not sourced or provided by Spacelabs, or is used in a manner that does not comply with this Agreement or the Documentation.

13. <u>Miscellaneous</u>.

13.1. <u>Audit Rights</u>. Spacelabs will have the right to monitor use of the Subscription Services and Software by Customer: (i) electronically at any time; or (ii) by on-site audit of Customer's use of the Subscription Services and Software, during normal business hours during the Term of this Agreement and for three years thereafter, to verify that Customer's use has not exceeded the scope of the rights acquired under the Agreement.

13.2. <u>Customer Reporting</u>. Customer agrees to properly report and disclose any discounts granted by Spacelabs to Customer relating to the Subscription Services and Software, to the extent required by applicable state or federal law.

13.3. <u>Consulting and Training</u>. Spacelabs will provide Subscription Services and Software consulting and training services in accordance with Spacelabs' then current consulting and training policies and pricing.

13.4. <u>Confidentiality</u>. As used in this Agreement, "Confidential Information" means all information that should reasonably be understood by Recipient, because of legends or other markings, the circumstances of disclosure or the nature of the information, to be proprietary and confidential to the disclosing party or a third party, and that is received by the receiving party from the disclosing party, or any of the disclosing party's affiliates, attorneys, or other agents, in whatever form transmitted, relating to the disclosing party's (including its affiliates') operations, business, affairs or property, including, without limitation, technologies, research and development, business plans, trade secrets, and systems. Each party agrees to keep the other party's Confidential Information, including Subscription Services and Software pricing and Documentation, confidential. Each party will not use such Confidential Information except as necessary for the performance of this Agreement and will not disclose such Confidential Information except as required by law. Each party will limit disclosure of such Confidential Information only to those of its employees and contractors who have a need to know the Confidential Information and are bound by written confidentiality obligations as regards the Confidential Information that are no less strict than those stated herein.

13.5. <u>Compliance with Laws</u>. Each party will comply with all federal and state laws, ordinances, regulations and codes applicable to their rights and obligations hereunder, including the Health Insurance Portability and Accountability Act of 1996 and its associated regulations including 45 C.F.R. §§ 160 and 164, Standards for Privacy of Individually Identifiable Health Information, Final Rule (the "Final Privacy Rule"), and 45 C.F.R. §§ 160, 162 and 164, Health Insurance Reform: Security

Standards, Final Rule (the "Final Security Rule"), collectively referred to as ("HIPAA"). Spacelabs will use Protected Health Information only in connection with services performed under this Agreement or as otherwise authorized by HIPAA.

13.6. <u>Governing Law; Venue</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, U.S.A, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Washington to the rights and duties of the parties. This Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Except for matters of injunctive relief, for which either party may initiate proceedings in any court of competent jurisdiction, any controversy or claim arising out of or relating to this Subscription Agreement, or the breach thereof, shall be finally and exclusively determined by binding arbitration. The number of arbitrators shall be one. The place of the arbitration shall be King County, Washington. If Customer is headquartered in the United States, the arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. If Customer is headquartered outside of the United States, the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its International Rules. Judgment on the award rendered by the arbitration proceeding may be entered in any court of competent jurisdiction.

13.7. <u>Excusable Delay</u>. Spacelabs will not be responsible for any delay or non-performance of its obligations hereunder to the extent and for such periods of time as such delay or non-performance is due to causes beyond its control. Excusable delays include, but are not limited to, acts of God, war, acts of any government in either its sovereign or contractual capacity, fire, explosions, sabotage, the elements, epidemics, quarantine restrictions, strikes, lockout, embargoes, severe weather, delays in transportation, airline schedule, fuel shortages, or delays of suppliers or subcontractors. In particular, Spacelabs will not be responsible for any delay or non-performance of its obligations hereunder to the extent and for such periods of time as such delay or non-performance is due to: (i) Customer's failure to complete any site preparation or equipment acquisition or maintenance needed for Spacelabs to be able to perform any set-up or installation; (ii) Customer's failure to obtain and maintain all computer or other hardware, software, communications or other equipment and any other infrastructure, services, facilities or resources needed to properly access and use the Subscription Services and Software or to pay all third-party fees and access charges necessary to properly access and use the Subscription Services; or (iii) insufficient, unstable or unreliable inbound and/or outbound communication services, capacities, speeds, or outages.

13.8. <u>U.S. Government Rights: Commercial Computer Software and Documentation, Use Governed by Standard Commercial License</u>. If Subscription Services or Software is used by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government (and any prime contractor or subcontractor at any tier) hereby acknowledge and agree that the Subscription Services, Software, and any data relating thereto or derived therefrom are "commercial items" as defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. If the end user is a U.S. Government agency, department, or instrumentality, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Subscription Service software and any data relating thereto or derived therefrom, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. The object code of the Software is a copyrighted and published product of Spacelabs (except source code, which is copyrighted but unpublished), and all rights not granted expressly herein are reserved.

13.9. <u>Export Control</u>.

13.9.1. The Subscription Services, Software, and/or Documentation may be subject to United States export control laws. Customer acknowledges and agrees that the Subscription Services, Software, and Documentation shall not be transferred or otherwise exported or re-exported to prohibited or restricted countries, to restricted or prohibited persons or entities or for any prohibited or restricted end uses under applicable U.S. laws, including any changes to those laws that may be made from time to time. Spacelabs makes no representation that the Subscription Services, Software, or Documentation is appropriate for use in or from locations outside the United States without an export license. Any diversion of the Subscription Services, Software, Documentation or related hardware, software, technology, or information contrary to U.S. law is prohibited. Pursuant to U.S. laws, the lists of prohibited or restricted end-users includes the List of Specially Designated Nationals and Blocked Persons administered by U.S. Department of the Treasury, Office of Foreign Assets Control, the Entity, Unverified and Denied Persons lists administered by the U.S. Department of Commerce, and the Non-Proliferation and Debarred Parties Lists administered by the U.S. Department of State.

13.9.2. Customer represents, warrants, and covenants that it is not, and none of its Authorized Users is or will be, located in, under the control of, a national or resident of any prohibited or restricted country and it is not, and none of its Authorized Users is or will be, a prohibited or restricted person to which the transfer, export or reexport of the information, hardware, software, technology, or Software is prohibited by U.S. laws. Customer agrees to comply strictly with all applicable U.S. export laws, as well as any other applicable export laws, and assume sole responsibility for obtaining licenses to export or re-export as may be required.

13.9.3. The Software and Subscription Services may use encryption software, hardware and/or technology that are subject to licensing or other related requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774.

13.10. <u>Access to Records</u>. If and to the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States Code, until the expiration of four years after the termination of the Agreement, Spacelabs will make available, upon written request by the Secretary of the Department of Health and Human Subscription Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of the books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by Spacelabs to Customer. Spacelabs further agrees that in the event it carries out any of its duties for Customer through a subcontract with a related organization with a value or cost of Ten Thousand Dollars ($10,000.00) or more over a 12 month period, such subcontract will contain a provision requiring the related organization to make available until the expiration of four years after the furnishing of such Subscription Services or Software pursuant to such subcontract upon written request to the Secretary of the United States Department of Health and Human Subscription Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books and records of such organization as are necessary to verify the nature and extent of such costs.

13.11. <u>Invalidity; Waiver</u>. The invalidity or unenforceability of any provision hereof will not affect any other provision, and all terms and conditions will be construed in all respects as if any such invalid or unenforceable provision(s) were omitted. The failure of either party to require the performance of any obligation will not affect its right to require such performance at any time thereafter. The waiver of any remedy with respect to any default will not be taken as a waiver of any remedy for any succeeding default.

13.12. <u>Notices</u>.   All notices required hereunder must be delivered in writing, by personal delivery or by professional courier. Such notice will be effective upon receipt. Notwithstanding the foregoing, notices by Spacelabs relating to the operation or support of the Subscription Services or Software may be in the form of an electronic notice to Customer's authorized representative or administrator. Notice to Spacelabs will be delivered to the address set forth in the Customer Quotation, to the attention of the legal department.

13.13. <u>Entire Agreement</u>. This Agreement constitutes the complete and exclusive statement of the agreement between Spacelabs and Customer in connection with the parties' business relationship related to the subject matter hereof, and all previous representations, discussions, and writings are merged in, and superseded the Agreement.

13.14. <u>Assignment</u>. Customer may not, without Spacelabs' prior written consent, assign, delegate, pledge or otherwise transfer the Agreement, or any of its rights or obligations under the Agreement, or any Subscription Services, Software, Documentation or Spacelabs Confidential Information to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger, or consolidation. Spacelabs may assign the Agreement to any of its affiliates. Spacelabs may in its sole discretion subcontract parts of the Subscription Services to third parties, provided however, that Spacelabs will assume responsibility for such subcontractors' breaches of the Agreement as if they were the breaches of Spacelabs.

13.15. <u>Relationship of the Parties</u>. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third-party beneficiaries to the Agreement.

13.16. <u>Survival</u>. Sections 1, 3, 4.3, and 6 through 13, and any other terms that by their nature should survive the termination or expiration of this Agreement, will survive such termination or expiration.