



Subscription Agreement and Terms of Use for the MIPS Navigator™ and MIPS Advanced Integrated Registry™ (MIPS AIR™)

Thank you for selecting the MIPS AIR™ as your MIPS Qualified Registry. Please review this Subscription Agreement and Terms of Service ("Agreement") carefully. This Agreement is a legal agreement between you and QVH Systems, LLC ("QVH Systems"). QVH Systems hosts both the MIPS Navigator™ and MIPS Advanced Integrated Registry™ (MIPS AIR™), a suite of web-based software services designed to assist MIPS Eligible Clinicians ("ECs") maximize their MIPS bonuses. By accessing or using the MIPS Navigator™ and MIPS AIR™, you agree to these terms. If you do not agree to this Agreement, then you may not use the MIPS Navigator™ and MIPS AIR™.

WHEREAS, QVH Systems owns, maintains and distributes the MIPS Navigator™, an online tool which enables health care professionals and their administrative staff to sort through the various options presented by the Merit-Based Incentive Payment System ("MIPS") and produce a practice-specific plan to maximize their likely MIPS success;

WHEREAS, QVH Systems also operates a MIPS Qualified Registry, the MIPS AIR™, which will enable users of the MIPS Navigator™ to upload the data relevant to their MIPS Plan/Itinerary™, track their progress and have QVH Systems report their final MIPS performance to CMS, to the extent they upload the relevant data into the MIPS AIR™ and authorize QVH Systems to make these reports;

WHEREAS, Customer is a MIPS Eligible Clinician ("EC"), or an employer, or other representative of one or more MIPS ECs and desires to have QVH Systems report some or all of the MIPS performance categories to CMS on Customer's behalf;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereby agree as follows:

1. This Agreement describes the terms governing Your use of the MIPS Navigator™ and MIPS AIR™ services, including Quality, Advancing Care Information and Improvement Activity measure selection, progress tracking and reporting services relevant to Your practice, as well as all associated content, updates and new releases (collectively, the "Services").

2. License Grant and Restrictions for the MIPS Navigator™ and MIPS AIR™ Registry Services.

- a. You may use the Services after proper registration and any applicable payment to: 1) prepare and print a MIPS Plan/Itinerary for optimizing Your likely MIPS results and 2) to enter or upload (or authorize the upload of) the relevant information necessary to report performance associated with the MIPS Quality measures, Advancing Care Information metrics and/or Improvement Activities for the individual and/or practice NPI(s) for which You registered and paid. To the extent Customer

has registered a practice's, rather than an individual clinician's, NPI, *MIPS AIR™ services extend to cover each of Customer's MIPS Eligible Clinicians ("ECs") whose information is entered during the registration process, but only to the extent they are included in the report made on behalf of Customer's practice NPI.*

- b. You hereby represent and warrant that you are a licensed physician, clinician or other health care provider who is duly licensed with or otherwise authorized to provide health care services by the jurisdiction(s) in which you provide these services, or that you are authorized to use the AIR™ on behalf of one or more such clinicians or other health care providers. You further represent and warrant that you will only be using the Services in this capacity and within the scope of your license, certification or authorization. You will not allow the general public access to the Services or authorize the use of the Services by any third party.
- c. You agree that you will complete the Attestation Form, in which you will certify and attest to all the following:
 - i. You authorize QVH Systems to submit the data you have entered on your MIPS performance into the MIPS AIR™ to CMS on your behalf.
 - ii. You have authority to provide the information and you have taken appropriate steps to comply with all legal requirements applicable to the transmission of patient information.
 - iii. The data provided is true and accurate to the best of your ability.
 - iv. You understand and agree that the data you submit may be subject to audit and validation by QVH Systems and CMS, and you may be required to submit the underlying medical records upon request of QVH Systems or CMS.
- d. You may connect to the Services using any Internet browser supported by the Services. You are responsible for obtaining access to the Internet and the equipment necessary to use the Services. You can create and edit content with your user account.
- e. You will be able to upload or authorize the uploading of the relevant MIPS performance information using Our EHR agnostic web portal in any of the following manual or standard electronic data formats:
 - i. Web-based manual data entry
 - ii. Excel upload
 - iii. HL7 CDA upload or extraction
 - iv. Claims upload or extraction
- f. Customer is responsible, at its own expense, for working with its Practice Management system and EHR vendor(s) and obtaining and uploading this data or authorizing QVH Systems to electronically import any necessary data extracts into the MIPS AIR™.
- g. You will be able to view a summary of Your aggregated results during the performance year, which results will reflect the performance data which has been uploaded/imported.
- h. Provided, and to the extent You have uploaded the relevant information, and You so authorize Us in accordance with the requirements and deadlines set forth in the MIPS AIR™ for each performance year, QVH Systems will make the authorized MIPS submissions to CMS on Your behalf on or before the CMS deadline. These requirements include but are not limited to Your attestation that all MIPS performance data which has been uploaded/imported is accurate and complete, as well as Your authorization for QVH Systems and CMS to audit Your MIPS

- performance data.
- i. You understand and agree that Your submission of data does not guarantee that CMS will pay you a MIPS bonus; and the submission of data to the MIPS AIR™ does not guarantee (i) that you are eligible for a MIPS bonus or (ii) that you will receive a MIPS bonus; the payment of a MIPS bonus is up to CMS. The data that will be sent to CMS may have errors and QVH Systems is not responsible for any failure of payment or incorrect payment.
 - j. Your use of the Services is also governed by the terms of the Business Associate Agreement (BAA) between you and QVH Systems. The BAA is as defined under the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and its privacy and security regulations (“HIPAA”), and under the privacy and security provisions of the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), and is incorporated in Exhibit A.
 - k. You will be notified and receive a copy of this submission when it is completed. Except to the extent it may be included in de-identified, aggregated reports authorized pursuant to the Business Associate Addendum set forth in Exhibit A, Your MIPS registry information for that performance year will be deleted from Our system once the CMS audit period has passed. You understand and agree that You will retain this information for as long as CMS requires it be maintained.
 - l. You acknowledge and agree that (a) the submission of data through the MIPS AIR™ is not a guarantee of payment from CMS, and (b) Your disclosure of Protected Health Information (PHI) to QVH Systems and QVH System’s use and disclosure of this PHI to provide the deliverables described in this Agreement is subject to the Business Associate Agreement, and (c) except to the extent provided by CMS, MIPS performance reporting includes both Medicare and non-Medicare beneficiaries.
 - m. We may offer certain Services as closed or open beta services (“Beta Service” or “Beta Services”) for the purpose of testing and evaluation. You agree that we have the sole authority and discretion to determine the period of time for testing and evaluation of Beta Services. We will be the sole judge of the success of such testing and the decision, if any, to offer the Beta Services as commercial services. You will be under no obligation to acquire a subscription to use any paid Service as a result of your subscription to any Beta Service. We reserve the right to fully or partially discontinue, at any time and from time to time, temporarily or permanently, any of the Beta Services with or without notice to you. You agree that QVH Systems will not be liable to you or to any third party for any harm related to, arising out of, or caused by the modification, suspension or discontinuance of any of the Beta Services for any reason.

3. Your Rights to Use The Services

- a. The Services are protected by copyright, trade secret, and other intellectual property laws. QVH Systems grants You a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software as part of the Services. This license is for the sole purpose of enabling You to use and enjoy the benefit of the Services in the manner permitted by these terms. You may not copy, modify, distribute, sell or lease any part of Our Services or included software, nor may You reverse engineer or attempt to extract the source code of that software, unless laws prohibit those restrictions or You have Our written permission.
- b. You are only granted the right to use the Services and only for the purposes described above. QVH Systems reserves all other rights in the Services. Until termination of this Agreement and so long as You meet any applicable payment obligations and comply with this Agreement, QVH Systems grants to You a personal, limited, nonexclusive, nontransferable right and license to use the Services.

- c. You agree not to use, nor permit any third party to use, the Services or content in a manner that violates any applicable law or regulation, including but not limited to an applicable export and re-export control laws and regulations, or this Agreement.
- d. You shall not modify, change, reconfigure or otherwise alter the Services in any manner. Changes may be made to the Services as required by QVH Systems and/or applicable law.
- e. You agree that You are responsible for obtaining and uploading the data necessary to track and report Your MIPS performance for each of the MIPS measures/metrics/activities You have engaged Us to report on Your behalf.
- f. Rights of MIPS Quality Measure Stewards – Most of the MIPS Quality measures are also protected by copyright and other protections on behalf of the MIPS Quality Measure Stewards. You agree that you will not violate the copyright or other rights of these Measure Stewards or otherwise use these measures except as provided for in this Agreement. The following is specific to the PCPI and/or AMA measures:
 - i. Grant of Rights and License Restrictions
 1. Your right to use the PCPI and/or AMA measures (including PCPI and/or AMA measures made available royalty-free to registered users from the website www.thepcpi.org and/or www.physicianconsortium.org and/or www.ama-assn.org or other PCPI website (collectively referred to as “Websites”) that includes the AMA’s and/or PCPI’s copyright notices, including measure descriptions, numerator and denominator statements, inclusions/exclusions/exceptions, clinical and technical specifications including logic,value sets and data elements necessary to construct each Measure from administrative and/or clinical health care data and to report Measure results (“Measure”). Measures as defined and licensed hereunder do not include any computer code (source or application), application or any type of programming or relational data tables) is non-transferable, non-exclusive, and for the sole purpose of internal use by end user of performance measures within the United States and its territories;
 2. You may not modify the Measures except to customize the Measures for use within end user’s practice (but in no event will the content of the Measures be altered), removing any copyright, trademark, and attribution notices and disclaimers, creating derivative works (other than to customize the Measures for use within end user’s practice), removing copyright, trademark and selling or licensing Measures or otherwise making the Measures or any portion thereof available to any unauthorized party;
 3. Updated versions of the Measures are available on the Websites and that QVH Systems will provide updated versions of the Measures in the next release of its Product(s) if commercially feasible;
 4. You should ensure that anyone who has authorized access to the Product(s) including the Measures complies with the provisions of this agreement and with all applicable laws in the use of the Product(s) and the Measures, including but not limited to the Health Insurance Portability and Accountability Act.
 - ii. Notices
 1. The Measures have been developed by PCPI and/or the former AMA-PCPI, and are copyrighted by the PCPI, or by AMA as the convener and member of the former AMA-PCPI, or by AMA and PCPI, and/or by such other copyright owner as specified on the Measure(s);
 2. Limited proprietary coding is contained in the Measures data specifications for convenience. This license does not grant any rights to these proprietary code sets. You agree to obtain all legally necessary licenses for use of such proprietary coding from the

owners of these code sets including a separate license from the AMA for use of Current Procedural Terminology (CPT®). CPT contained in the Measures data specifications is copyrighted by the AMA.

iii. Miscellaneous

1. "THE END USER ACKNOWLEDGES THAT MEASURES ARE INTENDED TO FACILITATE QUALITY IMPROVEMENT ACTIVITIES BY PHYSICIANS AND OTHER HEALTH CARE PROFESSIONALS. THESE MEASURES ARE NOT CLINICAL GUIDELINES, DO NOT ESTABLISH A STANDARD OF MEDICAL CARE, AND HAVE NOT BEEN TESTED FOR ALL POTENTIAL APPLICATIONS. THE AMA, PCPI, PCPI'S MEMBERS, THE FORMER AMA-PCPI, AND THE FORMER PCPI'S MEMBERS SHALL NOT BE RESPONSIBLE FOR ANY USE OF ANY MEASURES. THE MEASURES ARE LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE AMA, PCPI, PCPI'S MEMBERS, THE FORMER AMA-PCPI, AND THE FORMER AMA-PCPI'S MEMBERS DISCLAIM LIABILITY FOR ANY CONSEQUENCES ATTRIBUTABLE TO OR RELATED TO ANY USES, NON-USE OR INTERPRETATION OF INFORMATION CONTAINED IN OR NOT CONTAINED IN THE MEASURES, AND FOR USE OR ACCURACY OF ANY CPT OR OTHER CODING CONTAINED IN MEASURES SPECIFICATIONS. THE DEVELOPMENT AND DISTRIBUTION OF THE MEASURES DOES NOT CONSTITUTE THE PRACTICE OF MEDICINE BY THE AMA, PCPI, BY ANY OF PCPI'S MEMBERS, BY THE FORMER AMA-PCPI, OR BY ANY OF THE FORMER AMA-PCPI'S MEMBERS. IN NO EVENT WILL THE AMA, PCPI, PCPI'S MEMBERS, THE FORMER AMA-PCPI, OR THE FORMER AMA-PCPI'S MEMBERS BE LIABLE TO END USER OR TO ANY OTHER PARTY FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH MEASURES EVEN IF THE AMA, PCPI, PCPI'S MEMBERS, THE FORMER AMAPCPI, OR THE FORMER AMA-PCPI'S MEMBERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AMA, PCPI, PCPI'S MEMBERS, THE FORMER AMA-PCPI, AND THE FORMER AMA-PCPI'S MEMBERS DO NOT WARRANT THAT THE MEASURES WILL MEET END USER'S REQUIREMENTS OR THAT THE OPERATION OF THE MEASURES WILL BE UNINTERRUPTED OR WITHOUT ERROR. END USER ACKNOWLEDGES THAT THE MEASURES HAVE NOT BEEN DEVELOPED ACCORDING TO END USER'S SPECIFICATIONS OR ARE OTHERWISE CUSTOM MADE. THE AMA'S, PCPI'S, EACH OF PCPI'S MEMBER'S, THE FORMER AMA-PCPI'S, AND EACH OF THE FORMER AMA-PCPI'S MEMBER'S ENTIRE LIABILITY AND END USER'S EXCLUSIVE REMEDY SHALL BE FOR THE AMA TO PROVIDE END USER WITH COMPLETE COPIES OF MEASURES VIA THE WEBSITES";
2. You acknowledge that QVH Systems may not provide end user with new or updated Measures in the event of the termination or expiration of the Agreement between QVH Systems and the AMA (on its own behalf and on behalf of PCPI). End user may continue to use Measures incorporated into its system prior to such termination or expiration of that Agreement and obtain updated Measures from the Websites;
3. The AMA and PCPI are third party beneficiaries of this agreement for purposes of enforcing their rights under the end user agreement.

4. Trademark

- a. MIPS Navigator™, the MIPS Navigator logo, MIPS AIR™, the MIPS AIR logo and the names of individual Services and their logos are trademarks of QVH Systems. You agree not to display or use, in any manner, QVH Systems' trademarks without QVH Systems' prior permission.

5. User Sign Up Obligations

- a. Upon acceptance of these Terms of Service, you will need to sign up for a user account prior to your access or use the Services. You agree to: a) provide true, accurate, current and complete information about Yourself and about all the MIPS Eligible Clinicians ("ECs") you include as prompted during the sign up process; and b) maintain and promptly update that information so that it is at all times true, accurate, and complete. If You provide any information that is untrue, inaccurate, outdated, or incomplete, or if QVH Systems has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, QVH Systems may terminate Your user account and refuse current or future use of any or all of the Services.

6. Payment.

The following terms apply, unless QVH Systems notifies You otherwise in writing. This Agreement also incorporates by reference and includes program ordering and payment terms provided to You on the website for the Services:

- a. MIPS AIR™ Services charges accrue for each MIPS Eligible Clinician on whose behalf QVH Systems tracks and reports MIPS performance.
- b. Payments will be billed to You in U.S. dollars, and Your account will be debited when You subscribe and provide Your payment information, unless stated otherwise in the program ordering or payment terms on the website for the Services.
- c. You must pay with one of the following:
 - A valid credit card acceptable to QVH Systems;
 - A valid debit card acceptable to QVH Systems;
 - Sufficient funds in a checking or savings account to cover an electronic debit of the payment due; or
 - By another payment option QVH Systems provides to You in writing.
- d. If Your payment and registration information is not accurate, current, and complete and You do not notify us promptly when such information changes, QVH Systems may suspend or terminate Your account and refuse any use of the Services.

7. Help and Support

- a. QVH Systems may use a variety of methods (e.g., in-product roll-overs and FAQs, Internet, e-mail, chat, On-Line communities and video) to provide technical support and customer service in connection with the Services. The terms and conditions governing the offering of this support, which may require the payment of an additional fee, are subject to change as announced by QVH Systems from time to time.
- b. QVH Systems does not give professional advice. Unless specifically purchased separately from QVH Systems, QVH Systems is not in the business of providing legal, financial, accounting, tax, or other professional services or advice. Consult the services of a competent professional when You need this type of assistance.
- c. QVH Systems is not acting as Your agent or fiduciary in connection with Your use of the Services.

8. Guarantees

- a. QVH Systems works diligently to ensure the accuracy of the information in the MIPS Navigator™ and the MIPS AIR™. Because the Merit-Based Incentive Payment System (“MIPS”) is new, it will likely be sometime before definitive interpretations of the relevant regulations are published. QVH Systems guarantees that it will monitor CMS publications concerning MIPS, and will make commercially reasonable efforts to notify its registered users and update the MIPS Navigator™ and MIPS AIR™ in a timely fashion as necessary and appropriate to reflect any changes required by these CMS publications. If You are a registered user, You retain the right to review and revise Your MIPS Plan/Itinerary™ in response to each QVH Systems’ announced update or correction to the MIPS Navigator™ or MIPS AIR™ without additional charge. You are responsible for keeping QVH Systems apprised promptly of any change in Your email address so that You can be notified of such updates or corrections. A "registered user" is a user from whom QVH Systems has received the information necessary to permit such person to print a MIPS Plan/Itinerary™ prepared using the MIPS Navigator™ and/or the information necessary to track and report performance on the MIPS measures, metrics and/or activities identified above and who complies with the terms and conditions of this Agreement.
- b. NO GUARANTEE AS TO ACCURACY OF YOUR 2014 MEDICARE PART B PAYMENTS OR OTHER INFORMATION FROM GOVERNMENT WEBSITES. To assist You prepare Your MIPS Plan/Itinerary™ and to report Your MIPS data, the MIPS Navigator™ and MIPS AIR™ make available information published on CMS and other governmental websites. QVH Systems is not responsible for any errors contained in the information on these websites. If You have concerns about the accuracy of any of this information, You should confirm the facts with CMS or other relevant governmental agency. Similarly, if you have questions about any MIPS Quality Measure, you should contact the organization responsible for maintaining that MIPS Quality measure.

9. Not Available on a Mobile Device. Neither the MIPS Navigator™ nor the MIPS AIR™ are accessible from a mobile device.

10. Privacy of Personal Information.

- a. QVH Systems places the highest importance on respecting and protecting the privacy of Our customers. Our most important asset is Our relationship with You. We want You to feel comfortable and confident when using Our products and services and with entrusting Your personal and practice information to Us. Our full QVH Systems Privacy Statement can be found on the QVH Systems website. You agree to the applicable QVH Systems Privacy Statement, and any changes published by QVH Systems. To contact Us with a question, visit Our website.
- b. You agree that QVH Systems may use and maintain Your data according to the QVH Systems Privacy Statement as part of the Services. You give QVH Systems permission to combine identifiable and non-identifiable information You enter or upload for the Services with that of other users of the Services and/or other QVH Systems services. For example, this means that QVH Systems may use Your and other users’ non-identifiable, aggregated data to improve the Services or to design promotions and provide ways for You to compare business practices with other users. QVH Systems may utilize, transfer, or disclose aggregated information, including summary statistics, that has been de-identified in accordance with HIPAA at 45 CFR §164.514 such that it does not identify an individual and cannot be used to identify an individual for any purpose. Notwithstanding the foregoing, QVH Systems’ use of de-identified data shall be in accordance with its Notice of Privacy Policy located via the bottom navigation link of each webpage on: www.qvhsystems.com . A sample of the HIPAA Business Associate Agreement can be found at: www.qvhsystems.com/HIPAA/BAA

- c. QVH Systems will only access or store personal information in the United States.
- d. You are responsible for protecting the information on Your computer such as by installing anti-virus software, updating Your software, password protecting Your files, and not permitting third party physical or electronic access to Your computer or Your files. You are responsible for all activities that occur in your user account and you agree to inform us immediately of any unauthorized use of your user account by email to: **support@qvhsystems.com or by calling us on any of the numbers listed on our website**. We are not responsible for any loss or damage to you or to any third party incurred as a result of any unauthorized access and/or use of your user account, or otherwise.
- e. You may provide Us with Your mobile telephone number as part of Your customer record or registration or via other method. You understand and agree that QVH Systems may require multiple sources of information about You to confirm Your identity and help ensure the security of Your personal use of the MIPS Navigator™ and MIPS AIR™. Part of Our identity authentication and verification process may involve QVH Systems sending text message(s) containing security code(s) to Your mobile phone number. You agree to receive these text message(s) from QVH Systems containing security code(s) as part of the verification process. In addition, You agree that QVH Systems may send automated text messages and pre-recorded voice messages to your mobile phone number You provide for certain limited purposes, including: verifying Your identity, providing You with important critical notices regarding Your use of the Services, or fulfilling a request made by You through the Services.

11. Safeguards

- a. You will implement and maintain appropriate administrative, physical and technical safeguards to protect information. Such safeguards shall comply with federal, state, and local requirements, including the HIPAA Privacy and Security Rules, whether or not you are otherwise subject to HIPAA. You will maintain appropriate security with regard to all personnel, systems, and administrative processes used by you or members of your staff to transmit, store and process electronic health information through the use of the Services.
- b. You must be at least 18 years of age to enter into this binding agreement. If you are not at least 18 years old or you do not agree to each of these Terms of Service, you are prohibited from and must not access or use any of our Services.
- c. Under no circumstances may our Services be used by a child under 13 years of age.

12. User ID and Password Security

- a. You are the only person authorized to use Your user ID and password and for maintaining the confidentiality of Your user ID and password. You shall not permit or allow other persons to have access to or use Your user ID and password. You are responsible for the use of the Services under Your user ID. You must create a user ID and password for You to access Your MIPS Plan/Itinerary™ or MIPS AIR™ registry information. *If an unauthorized login is detected from Your account, QVH Systems may disconnect or terminate Your service without Your knowledge.*
- b. You will manage Your passwords and accept updates. You are responsible for securely managing Your password(s) for the Services and to contact QVH Systems if You become aware of any unauthorized access to Your account. The Services may periodically be updated with tools, utilities, improvements, third party applications, or general updates to improve the Services. You agree to receive these updates.

13. Content

- a. You are responsible for all materials ("Content") uploaded, posted or stored through Your use of the

Services. You grant QVH Systems a worldwide, royalty-free, non-exclusive license to host and use any Content provided through your use of the Services. You are responsible for any lost or unrecoverable Content. You must provide all required and appropriate warnings, information and disclosures. QVH Systems is not responsible for the Content or data You submit through the Services. You agree not to use, nor permit any third party to use, the Services to upload, post, distribute, link to, publish, reproduce, engage in or transmit any of the following, including but not limited to:

- i. Illegal, fraudulent, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, harassing, offensive, inappropriate or objectionable information or communications of any kind, including without limitation conduct that would encourage "flaming" others, or criminal or civil liability under any local, state, federal or foreign law;
- ii. Content that would impersonate someone else or falsely represent Your identity or qualifications, or that constitutes a breach of any individual's privacy;
- iii. Except as permitted by QVH Systems in writing, investment opportunities, solicitations, chain letters, pyramid schemes, other unsolicited commercial communication or engage in "phishing", "spamming" or "flooding";
- iv. Virus, Trojan horse, worm or other disruptive or harmful software or data; and
- v. Any information, software or Content which is not legally Yours and without permission from the copyright owner or intellectual property rights owner.
- vi. *QVH Systems reserves the right to terminate Your service without notice if there are reasonable grounds to believe that you have used the Services for any illegal or unauthorized activity.*
- vii. You may transmit or publish content created by you using any of the Services or otherwise. However, you shall be solely responsible for such content and the consequences of its transmission or publication. Any content made public will be publicly accessible through the internet and may be crawled and indexed by search engines. You are responsible for ensuring that you do not accidentally make any private content publicly available. Any content that you may receive from other users of the Services, is provided to you AS IS for your information and personal use only and you agree not to use, copy, reproduce, distribute, transmit, broadcast, display, sell, license or otherwise exploit such content for any purpose other than treatment, payment or operations as authorized by the BAA, without the express written consent of the person who owns the rights to such content. In the course of using any of the Services, if you come across any content with copyright notice(s) or any copy protection feature(s), you agree not to remove such copyright notice(s) or disable such copy protection feature(s) as the case may be. By making any copyrighted/ copyrightable content available on any of the Services you affirm that you have the consent, authorization or permission, as the case may be from every person who may claim any rights in such content to make such content available in such manner. Further, by making such content available, you expressly agree that QVH Systems will have the right to block access to or remove such content made available by you if QVH Systems receives complaints concerning any illegality or infringement of third party rights in such content. By using any of the Services and transmitting or publishing any content using such Service, you expressly consent to determination of questions of illegality or infringement of third party rights in such content by the agent designated by QVH Systems for this purpose.

14. Data Ownership, Intellectual Property and License

- a. We respect your right to ownership of content created or stored by you. You own the content

created or stored by you. When you submit content to QVH Systems, you grant QVH Systems a worldwide, royalty-free right to access, use, copy, store, transmit, host, reproduce, display, perform, adapt, modify, reformat, publish or distribute the content created by you or stored in your user account for the purpose of providing the Services hereunder.

- b. For purposes of these Terms of Service, "Intellectual Property Rights" shall mean any and all proprietary rights of any kind, tangible or intangible, now known or hereafter existing, including without limitation copyrights, neighboring rights and moral rights; trade secrets; trademarks; patents; other industrial property rights; other legally protectable elements and contributions; collective and derivative works; and all registrations, and applications thereof now or hereafter in force in any jurisdiction throughout the world.
- c. Except for the content you submit as described above, as between you and us, QVH Systems owns all right, title and interest in and to our Services, including all Intellectual Property Rights. QVH Systems grants you a limited, nonexclusive, non-sub-licensable, nontransferable and revocable license to access and make use of QVH Systems' Services as reasonably necessary under these Terms of Service. You do not acquire any rights, express or implied, in the Services other than the license expressly granted under these Terms of Service.

15. List Serve. The Services may include a list serve, community forum or other social features to exchange Content and information with other users of the Services and the public. QVH Systems does not support and is not responsible for the content in these community forums. Please use respect when You interact with other users. Do not reveal information that You do not want to make public. Users may post hypertext links to content of third parties for which QVH Systems is not responsible.

16. Feedback. QVH Systems may freely use feedback You provide. You agree that QVH Systems may use Your feedback, suggestions, or ideas in any way, including in future modifications of the Services, other products or services, advertising or marketing materials. You grant QVH Systems a perpetual, worldwide, fully transferable, sub-licensable, non-revocable, fully paid-up, royalty free license to use the feedback You provide to QVH Systems in any way.

17. Monitoring. QVH Systems may, but has no obligation to, monitor content on the Services. We may disclose any information necessary to satisfy Our legal obligations, protect QVH Systems or its customers, or operate the Services properly. QVH Systems, in its sole discretion, may refuse to post, remove, or refuse to remove, any Content, in whole or in part, alleged to be unacceptable, undesirable, inappropriate, or in violation of this Agreement.

18. Audit. You authorize QVH Systems to access, inspect and audit your records relating to the use of the MIPS AIR™ and data or information provided by you as required by CMS and QVH System's Agreement with CMS. ***YOU UNDERSTAND AND AGREE THAT IF, IN THE COURSE OF AN AUDIT BY QVH SYSTEMS, QVH SYSTEMS DETERMINES THAT YOU ENTERED OR UPLOADED FALSE INFORMATION INTO THE MIPS AIR™, YOU WILL BE RESPONSIBLE FOR INDEMNIFYING QVH SYSTEMS FOR ALL ITS COSTS AND EXPENSES INCURRED IN CONDUCTING THE AUDIT AND DEALING WITH ANY AND ALL SEQUELAE OF THAT AUDIT.***

19. Survey. By using QVH Systems' services, you authorize QVH Systems to contact you for survey or statistical purposes. You also agree that QVH Systems shall be entitled to disclose information received from you for the purpose of (and only to the extent necessary for) operating QVH Systems' business and

providing the QVH Systems' services, including, sharing your information or data with others to the extent necessary to fulfill the terms of these QVH Systems' Terms of Service, but only in accordance with all applicable law, or pursuant to a valid order issued by a duly authorized court or government authority.

20. Compliance with Applicable Law.

- a. You will use the Services in a manner that complies with all applicable law. You hereby certify that you have obtained or will obtain any and all necessary patient consents and authorizations required by applicable law, including all federal, state, local, common law, rules, regulations, directives, and guidelines prior to using the Services.
- b. Without limiting the foregoing, you agree to comply with any privacy and patient consent policies of QVH Systems related to the delivery of "Private Information" as may be available through the Services by from time to time. "Private Information" means: (i) Protected Health Information ("PHI"), as defined under HIPAA and related regulations, created or received on behalf of, or received from QVH Systems; (ii) Nonpublic Personal Financial Information and, as applicable, Nonpublic Personal Health Information, as defined by the Gramm-Leach-Bliley Act; or (iii) any data or information that: (1) relates to an individual, and (2) identifies or can reasonably be believed to form the basis for identifying an individual (such as, but not limited to, an individual's name, postal address, e-mail address, telephone number, date of birth, Social Security number, driver's license number, financial account number, or any other unique identifier).
- c. You hereby represent and warrant that all messages transmitted via the Services will originate from the United States.
- d. You will immediately notify us of any breach or suspected breach of the security of the Services of which you become aware, or any unauthorized use or disclosure of information within or obtained from the Services, and you will take such action to mitigate the breach or suspected breach as QVH Systems may direct, and will cooperate with us in investigating and mitigating the breach.

21. Additional Terms.

- a. We may tell You about other QVH Systems' services. You may be offered other services, products, or promotions by QVH Systems ("QVH Systems Services"). Additional terms and conditions and fees may apply. You grant QVH Systems permission to use information about Your business and experience to help Us to provide the QVH Systems Services to You and to enhance the Services. You grant QVH Systems permission to combine Your business data, if any, with that of others in a way that does not identify You or any individual personally. You also grant QVH Systems permission to share or publish summary results relating to research data and to distribute or license such data to third parties.
- b. Communications. The Service may include certain communications from QVH Systems, such as service announcements, administrative messages and newsletters. You understand that these communications shall be considered part of using the Services. QVH Systems may be required by law to send You communications about the Services or Third Party Products. You agree that QVH Systems may send these communications to You via email or by posting them on Our websites.
- c. DISCLAIMER OF WARRANTIES
 - i. YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO THE SOFTWARE AND CONTENT, IS ENTIRELY AT YOUR OWN RISK. EXCEPT AS DESCRIBED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS", "AS AVAILABLE" AND WITHOUT WARRANTIES." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, QVH SYSTEMS, ITS AFFILIATES, AND ITS THIRD-PARTY PROVIDERS,

LICENSORS, DISTRIBUTORS OR SUPPLIERS (COLLECTIVELY, "SUPPLIERS") DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY THAT THE SERVICES ARE FIT FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, DATA LOSS, NON-INTERFERENCE WITH OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, OR THE ACCURACY, RELIABILITY, QUALITY OR CONTENT IN OR LINKED TO THE SERVICES. QVH SYSTEMS AND ITS AFFILIATES AND SUPPLIERS DO NOT WARRANT THAT THE SERVICES ARE SECURE, FREE FROM BUGS, VIRUSES, INTERRUPTION, ERRORS, THEFT OR DESTRUCTION. USE OF ANY MATERIAL DOWNLOADED OR OBTAINED THROUGH THE USE OF THE SERVICES SHALL BE AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, CELL PHONE, WIRELESS DEVICE OR DATA THAT RESULTS FROM THE USE OF THE SERVICES OR THE DOWNLOAD OF SUCH MATERIALS. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM QVH SYSTEMS OR ITS AGENTS SHALL CREATE ANY WARRANTY. IF THE EXCLUSIONS FOR IMPLIED WARRANTIES DO NOT APPLY TO YOU, ANY IMPLIED WARRANTIES ARE LIMITED TO 60 DAYS FROM THE DATE OF PURCHASE OR DELIVERY OF THE SERVICES, WHICHEVER IS SOONER.

- ii. QVH SYSTEMS, ITS AFFILIATES AND SUPPLIERS DISCLAIM ANY REPRESENTATIONS OR WARRANTIES THAT YOUR USE OF THE SERVICES WILL SATISFY OR ENSURE COMPLIANCE WITH ANY LEGAL OBLIGATIONS OR LAWS OR REGULATIONS. QVH SYSTEMS MAKES NO GUARANTY OF ANY KIND THAT YOU OR ANY OF YOUR MIPS ECS WILL RECEIVE ANY INCENTIVE PAYMENTS OR ANY OTHER GOVERNMENT FUNDS OR AVOID ANY GOVERNMENT IMPOSED PENALTIES AS A RESULT OF THE USE OF THE SERVICES. THE INFORMATION PROVIDED BY THE SERVICES IS NOT INTENDED AS LEGAL ADVICE AND ALL LEGAL INQUIRIES ABOUT TOPICS ADDRESSED BY THE SERVICES SHOULD BE DIRECTED TO YOUR LEGAL COUNSEL.
 - iii. QVH SYSTEMS MAKES NO REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY THROUGH THE MIPS AIR™ OF ANY PARTICULAR DATA SOURCE. AT ANY TIME, DATA SOURCES MAY BE ADDED OR DELETED WITHOUT PRIOR NOTICE. QVH SYSTEMS USES AVAILABLE TECHNOLOGY TO MATCH PATIENT IDENTITIES IN ORDER TO PROVIDE THE MIPS AIR™ SERVICES. QVH SYSTEMS DOES NOT INDEPENDENTLY VERIFY OR REVIEW THE INFORMATION UPLOADED TO THE MIPS AIR™ FOR ACCURACY AND COMPLETENESS.
- d. LIMITATION OF LIABILITY AND INDEMNITY. YOU UNDERSTAND THAT QVH SYSTEMS WILL NOT AUDIT OR OTHERWISE VERIFY ANY INFORMATION YOU PROVIDE, AND IS NOT RESPONSIBLE FOR ANY INFORMATION YOU ENTER IN THE MIPS NAVIGATOR™ OR MIPS AIR™. QVH SYSTEMS SHALL NOT BE LIABLE FOR LOSS OF PROFITS OR INVESTMENT, ANY SHARED SAVINGS, MIPS PENALTY OR BONUS, INCORRECT OR INCOMPLETE INFORMATION PROVIDED TO QVH SYSTEMS, OR ANY ACCESS TO, OR USE OF, YOUR PASSWORD AND USER ID BY AN UNAUTHORIZED PERSON. QVH SYSTEMS SHALL NOT BE LIABLE FOR ANY DEFAULT OR DELAY IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT TO THE EXTENT ITS PERFORMANCE IS DELAYED OR PREVENTED DUE TO CAUSES BEYOND ITS REASONABLE CONTROL, SUCH AS ACTS OF GOD, NATURAL DISASTERS, TERRORIST

ACTS, WAR OR OTHER HOSTILITIES, LABOR DISPUTES, CIVIL DISTURBANCES, THE ACTIONS OR OMISSIONS OF THIRD PARTIES, ELECTRICAL OR COMMUNICATION SYSTEM FAILURES, OR GOVERNMENTAL ACTION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF QVH SYSTEMS, ITS AFFILIATES AND SUPPLIERS FOR ALL CLAIMS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO SUCH CLAIM. SUBJECT TO APPLICABLE LAW, QVH SYSTEMS, ITS AFFILIATES AND SUPPLIERS ARE NOT LIABLE FOR ANY OF THE FOLLOWING: (A) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; (B) DAMAGES RELATING TO FAILURES OF TELECOMMUNICATIONS, THE INTERNET, ELECTRONIC COMMUNICATIONS, CORRUPTION, SECURITY, LOSS OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF BUSINESS, REVENUE, PROFITS OR INVESTMENT, OR USE OF SOFTWARE OR HARDWARE THAT DOES NOT MEET QVH SYSTEMS REQUIREMENTS. THE ABOVE LIMITATIONS APPLY EVEN IF QVH SYSTEMS AND ITS AFFILIATES AND SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS AGREEMENT SETS FORTH THE ENTIRE LIABILITY OF QVH SYSTEMS, ITS AFFILIATES AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES AND ITS USE. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH QVH SYSTEMS RELATED TO ANY OF THE SERVICES SHALL BE TERMINATION OF SUCH SERVICE.

- E. YOU AGREE THAT THE SOLE AND EXCLUSIVE RESPONSIBILITY FOR ANY MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO A PATIENT'S MEDICAL CARE AND FOR DETERMINING THE ACCURACY, COMPLETENESS OR APPROPRIATENESS OF ANY BILLING, CLINICAL, CODING, DIAGNOSTIC, MEDICAL OR OTHER INFORMATION PROVIDED BY THE SERVICES RESIDES SOLELY WITH THE PROFESSIONALS TREATING THE PATIENT. QVH SYSTEMS DOES NOT ASSUME ANY RESPONSIBILITY FOR HOW SUCH INFORMATION IS USED. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES DO NOT "RECOMMEND," "SUGGEST," OR "ADVISE" PROPER PRESCRIBING OR OTHER TREATMENT DECISIONS AND THAT THE RESPONSIBILITY FOR THE MEDICAL TREATMENT, AND ANY ASSOCIATED DECISIONS REGARDING BILLING FOR MEDICAL SERVICES, RESTS WITH THE PROFESSIONALS TREATING SUCH PATIENT AND THEIR JUDGMENT AND ANALYSIS OF THE PATIENT'S CONDITION.
- f. YOU ACKNOWLEDGE AND AGREE THAT QVH SYSTEMS HAS OFFERED ITS PRODUCTS AND SERVICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND QVH SYSTEMS, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND QVH SYSTEMS. YOU ACKNOWLEDGE AND AGREE THAT QVH SYSTEMS WOULD NOT BE ABLE TO PROVIDE THE PRODUCTS OR SERVICES CONTEMPLATED BY THIS AGREEMENT TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.
- g. You agree to indemnify and hold QVH Systems (and its respective officers, directors, employees, suppliers, agents and affiliates) from and against any and all claims, demands, actions, proceedings, suits, liabilities, losses, damages, penalties, fines and expenses, including reasonable attorneys' fees and costs, arising out of or relating to: i) your use of the Services, including without limitation any claims that you have used the services in violation of another party's rights, in violation of any law, or in violation of any provision of these Terms of Service, 2) any loss of connectivity to the MIPS Navigator™

- and MIPS AIR™ due to acts or omissions inconsistent with the Terms of Service, or 3) information provided to QVH Systems by you, or 4); or any breach of this Agreement (collectively referred to as "Claims").
- h. QVH Systems reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any Claims. You agree to reasonably cooperate as requested by QVH Systems in the defense of any Claims.
 - i. QVH Systems shall not be liable or deemed in default for failure to fulfill any obligation under these QVH Systems' Terms of Service due to causes beyond its reasonable control, including acts of God or of the public enemy, acts of any governmental authority in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, electrical power failures, telecommunication or internet backbone outages, failure of an internet access provider, and QVH Systems shall not be liable for losses, expenses or damages, direct, ordinary, special, consequential or punitive, resulting directly or indirectly from such causes.
 - j. CHANGES. We reserve the right to change this Agreement at any time, and the changes will be effective when posted through the Services, on Our website for the Services or when We notify You by other means. We may also change or discontinue the Services, in whole or in part. Your continued use of the Services indicates Your agreement to the changes.
 - k. CONFIDENTIALITY. You agree to keep confidential any and all of QVH Systems' information, whether explicitly marked confidential or reasonably believed to be confidential. All QVH Systems' documentation and materials available to you through the MIPS Navigator™ and MIPS AIR™ are deemed confidential.
 - l. TERMINATION. QVH Systems may, in its sole discretion and without notice, restrict, deny, terminate this Agreement or suspend the Services effective immediately, in whole or in part, for suspicion of fraud, security breach, illegal activity or unauthorized access issues to protect the integrity of Our Services or systems and comply with applicable QVH Systems policy, or if You fail to comply with this Agreement, or if You no longer agree to receive electronic communications. Upon termination, You must immediately stop using the Services and any outstanding payments will become due. Any termination of this Agreement shall not affect QVH Systems' rights to any payments due to it. All sections of this Agreement which by their terms are relevant after the termination of this Agreement survive and remain in effect even if the Agreement is terminated. Objections to suspension or disabling of user accounts should be made to MIPSAdmin@qvhsystems.com within thirty days of being notified about the suspension. We may terminate a suspended or disabled user account after thirty days. We will also terminate your user account on your request. In addition, we reserve the right to terminate your user account and deny the Services upon reasonable belief that you have violated the Terms of Service and to terminate your access to any Beta Service in case of unexpected technical issues or discontinuation of the Beta Service. Termination of user account will include denial of access to all Services, deletion of information in your user account such as your e-mail address and password and deletion of all data in your user account. We will provide you prior notice of such termination and backup of your data, by email. The data deletion policy may be implemented with respect to any or all of the Services.
 - m. GOVERNING LAW. Oklahoma state law governs this Agreement without regard to its conflicts of laws provisions.
 - n. DISPUTES. ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO THE SERVICES OR THIS AGREEMENT WILL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT, except that You may assert claims in small claims court if Your claims qualify. The Federal Arbitration Act governs the interpretation and enforcement of this provision; the arbitrator shall apply Oklahoma

law to all other matters. Notwithstanding anything to the contrary, any party to the arbitration may at any time seek injunctions or other forms of equitable relief from any court of competent jurisdiction. WE EACH AGREE THAT ANY AND ALL DISPUTES MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. BY ENTERING THIS AGREEMENT AND AGREEING TO ARBITRATION, YOU AGREE THAT YOU AND QVH SYSTEMS ARE EACH WAIVING THE RIGHT TO FILE A LAWSUIT AND THE RIGHT TO A TRIAL BY JURY. IN ADDITION, YOU AGREE TO WAIVE THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR LITIGATE ON A CLASS-WIDE BASIS. YOU AGREE THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THESE RIGHTS. To begin an arbitration proceeding, send a letter requesting arbitration and describing Your claim to QVH Systems Inc., in care of Our registered agent:

Kenneth F. Albright
Albright, Rusher & Hardcastle
15 West 6th Street, Suite 2600
Tulsa, Oklahoma 74119

- o. Arbitration will be conducted by the American Arbitration Association (AAA) before a single AAA arbitrator under the AAA's rules, which are available at www.adr.org or by calling 1-800-778-7879. Payment of all filing, administration and arbitrator fees and costs will be governed by the AAA's rules. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in Tulsa, Oklahoma. The decision of the arbitrator shall be final and not appealable, and judgment on the arbitration award may be entered in any court having jurisdiction thereof. This Section shall survive expiration, termination or rescission of this Agreement.
- p. NOTICES. Unless otherwise provided in these Terms of Service, any notice required or permitted under these Terms of Service shall be given by you to QVH Systems in writing and shall be deemed effectively given as follows: (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by facsimile or electronic mail, then such notice shall be deemed given upon receipt of confirmation of complete transmittal, (iii) if given by mail, then such notice shall be deemed given upon the earlier of (A) receipt of such notice by the recipient or (B) three days after such notice is deposited in first-class mail, postage prepaid, and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one (1) business day after delivery to such carrier. All notices shall be addressed to QVH Systems at the address as follows, or at such other address as QVH Systems may designate by written notice to you: QVH Systems, LLC. Attn: MIPS AIR™ Services, 1437 S. Boulder Ave., Suite 1030, Tulsa, OK 74119. You agree to provide us advance written notice of any change to your information, including without limitation the information you provided on your enrollment form or otherwise while signing up for a user account and your contact information, e.g., your e-mail address, mailing address, phone number and/or facsimile number. You agree that we may communicate with you electronically by way of e-mail to the e-mail address you provide to us or by way of posting notices on our website. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.
- q. WAIVER. The failure of either party to enforce any provision of these Terms of Service or to act with respect to a breach by the other party of these Terms of Service shall not be deemed a waiver of such provision, the right to act with respect to subsequent or similar breaches, or the right to enforce such provision.
- r. GENERAL. This Agreement is the entire agreement between You and QVH Systems and replaces all prior understandings, communications and agreements, oral or written, regarding its subject matter. If

any court of law, having the jurisdiction, rules that any part of this Agreement is invalid, that section will be removed without affecting the remainder of the Agreement. The remaining terms will be valid and enforceable. You cannot assign or transfer ownership of this Agreement to anyone without written approval of QVH Systems. However, QVH Systems may assign or transfer it without Your consent to (a) an affiliate, (b) a company through a sale of assets by QVH Systems or (c) a successor by merger. Any assignment in violation of this Section shall be void.

EXHIBIT A - BUSINESS ASSOCIATE ADDENDUM

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the “Agreement”) is made as of the effective date of the MIPS Navigator™ and MIPS AIR™ Subscription Agreement (“Underlying Agreement”) by and between **Customer** (“Covered Entity”) and **QVH Systems** (“Business Associate”). This agreement supersedes any prior agreement between the parties that regards the privacy and confidentiality of Protected Health Information (“PHI”) and the security of Electronic PHI as it applies to Customer’s use of the MIPS AIR™. This agreement is intended to supplement any service or other agreement, arrangement or understanding between the parties.

WHEREAS, in connection with **MIPS Navigator™ and MIPS AIR™ Subscription Agreement**, Covered Entity may disclose certain information to Business Associate constituting Protected Health Information (PHI). If and only to the extent that Covered Entity discloses PHI to Business Associate, this Agreement will become effective in order for Covered Entity and Business Associate to comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Health Information Technology for Economic and Clinical Health Act (“HITECH”) (collectively, “HIPAA”) and privacy and security regulations promulgated thereunder as amended from time to time (the “HIPAA Regulations”) and other applicable laws.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

I. Definitions

Unless otherwise specified in this Agreement, all capitalized terms will have the meaning ascribed to them under the HIPAA Regulations.

II. Obligations of Business Associate

Business Associate agrees to:

- (a) not use or disclose PHI other than as permitted or required by the Agreement or as required by law;
- (b) use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to PHI in electronic form, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- (c) immediately report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured PHI as required at 45 CFR 164.410, and any Security Incident compromising the privacy or security of PHI of which it becomes aware. Business Associate’s notice will include, to the extent available, information necessary for Covered Entity to comply with its breach notification obligations under the HIPAA Regulations and/or state law. Business Associate may supplement its initial report as facts become available.
- (d) Notice to Covered Entity under this paragraph, will be provided as designated on the signature block of the **MIPS Navigator™ and MIPS AIR™ Subscription Agreement** in accordance with 45 CFR

164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(e) make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(f) make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

(g) maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(h) comply with the requirements of Subpart E of 45 CFR Part 164 to the extent required by law and also to the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164; and

(i) make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Regulations.

III. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement. In addition to other permissible purposes, Business Associate is authorized to use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

(b) Business Associate may use or disclose PHI as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures provided to Business Associate in advance.

(d) Except for uses and disclosures set forth in Section III (e), (f) and (g) herein, Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

(e) Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.

(f) Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies

Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business Associate may provide data aggregation services relating to the health care operations of Covered Entity.

IV. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

Notice to Business Associate under this paragraph, will be provided as designated on the signature block of the **MIPS Navigator™ and MIPS AIR™ Subscription Agreement**.

V. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except for Business Associate uses and disclosures of PHI for data aggregation or management and administration and the legal responsibilities of Business Associate.

VI. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of the Effective Date and shall terminate upon termination of the business relationship between the parties by mutual agreement or appropriate written notice, termination of the Underlying Agreement, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines that Business Associate has violated a material term of this Agreement or the Underlying Agreement and Business Associate has not cured the breach or ended the violation within the reasonable time specified by Covered Entity. Termination of this Agreement will suspend uses and disclosures of PHI by Business Associate pursuant to the Underlying Agreement.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy, all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form. Business Associate shall retain no copies of identifiable health information. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of covered entity, shall:

- retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form;
- continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set forth herein; and
- return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

The obligations of Business Associate under this Section shall survive the termination of this Agreement.

VII. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Regulations means the section as in effect or as amended.

(b) Automatic Amendment. The parties agree that privacy and security laws are rapidly evolving and that amendment of this Agreement may be necessary to ensure ongoing compliance. Specifically, HITECH, as implemented by the HIPAA Omnibus Rule (78 Fed. Reg. 5566 (January 25, 2013)), imposed new requirements on business associates and covered entities with respect to privacy, security and breach notification. Applicable HIPAA and HITECH provisions, together with any guidance issued by the Secretary, and any applicable amendments to federal and state privacy law, are hereby incorporated by reference and will become part of this Agreement as if set forth in their entirety, effective as of the applicable effective date/s.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Regulations.