

**DetecTogether**

SAVING LIVES THROUGH  
EARLY CANCER DETECTION

# 3 Steps Detect License Agreement

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# 3 Steps Detect License Agreement

This **Software As A Service Agreement** (the "Agreement") is made as of between the "User" and DetecTogether, a Massachusetts nonprofit corporation, with its principal office at 53 Otis Street, Westborough, MA 01581("Vendor").

**WHEREAS**, Vendor has a mission to save lives by teaching people how to detect cancer early and has developed a training program software application and related thereto, including the copyrighted 3 Steps Detect training program consisting of the modules shown at Schedule D (which may be updated from time to time (the "Training Program")

**WHEREAS**, User desires to have Vendor host and deliver the Training Program and also provide any of the items shown in any Addendum to this Agreement; and

**WHEREAS**, Vendor and User desire to enter into this Agreement defining their respective rights and responsibilities and memorializing the terms and conditions pursuant to which Vendor will provide to User the Services for the consideration recited herein..

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, the parties intending to be legally bound hereby agree as follows:

## Definitions

- a. "aaS" is an acronym for "As A Service" and means the combined hosting and support services provided in this Agreement.
- b. "aaS Materials" shall mean any written materials relating to the access and use of the Training Program including, but not limited to, user manuals, user guides, technical manuals, release notes, and online help files regarding use of the Training Program provided as part of the Service, and any other materials prepared in connection with any Training Program modification, correction, or enhancement, and shall include any updated versions of aaaS Materials as may be provided by Vendor from time to time (1) in the course of providing the Service; or (2) as part of online tutorials or help files provided with the Service;.
- c. "Application Support Services" shall mean the support not included in the Product Support Services and defined in Schedule C, if any.
- d. "Base Components" means the hardware, software, and hosting environment as specified in Schedule D that Vendor makes available for use by User as part of the Service.
- e. "Cloud Hosting" means the provision of products and services in a hosted, virtualized environment, accessible via the internet.
- f. "Training Program" means Vendor proprietary software applications and user interfaces as defined in Schedule A and made available to User by Vendor as part of the Service. Training Program may contain third-party components licensed to Vendor.
- g. "User Data" means all data, files, including hypertext markup language files, documents, audio and visual information, graphics, scripts, programs, applets or servlets that User creates, installs, uploads to or transfers in or through the Service or provides in the course of using the Service, excluding identification and other information provided by User relative to User Users.
- h. "Electronic Communications" shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Service.
- i. "Infrastructure Support Services" shall mean the support, if any, provided by Vendor for the maintenance and stability of the computer hardware and hosting environment provided as part of the Service.
- j. "Product Support Services" shall mean the support, if any, provided by Vendor to remediate, correct, or abate errors in the Training Program that is provided as part of the Service as defined in Schedule B. Support for User specific configurations and customizations (if any) are handled by Application Support Services defined in schedule C.
- k. "Purchase Order Form(s)" refers to a User document, in either electronic or written form, issued by User to confirm User's purchase of the Service. The parties acknowledge and agree that the terms and conditions of any such Purchase Order Form shall not be binding upon the parties or in any way modify, amend, or supersede the terms and conditions of this Agreement.

- l. "Service" shall mean the Training Program and infrastructure in a hosted environment provided and maintained by Vendor to which User is being granted access under this Agreement via a web site. Service or Services includes Product Support Services and Application Support Services if any are described in this Agreement.
- m. "Term" means any Initial Term and/or Renewal Term as defined in Section 6 of this Agreement.
- n. "Third Party Products" means application software products provided by third party vendors, including operating system and application software with which the Training Program interfaces and which provides certain functionality essential to the operation of the Training Program. Third Party Products, if any, are licensed to Vendor for incorporation and use in the hosted environment as part of the Service as set forth in the Statement of Work. For the sake of clarity, the term Third-Party Products does not refer to third-party software components, if any, incorporated into Training Program.
- o. "User(s)" means individuals who are authorized to use the Service and have been registered.

## 1. PROVISION OF SERVICES

In consideration of the fees paid by User under this Agreement, Vendor agrees to provide User access to the Service. Specific components of the Service to be provided to User are as outlined in the Schedules annexed hereto.

## 2. INSTALLATION SCHEDULE

User shall have a license for single use users. User will create their own login and password.

## 3. LICENSE GRANTS

Subject to the terms and conditions of this Agreement, Vendor grants to User during the Term of this Agreement the nontransferable, nonexclusive worldwide right to permit Users to (a) use the Service, including the Base Components thereof, (b) display and print the video modules, and (c) use the aaS Materials solely in connection with the Service, all solely for User's own internal business operations, provided such internal business operations shall not include commercial time-sharing, rental, outsourcing, service bureau or similar use unless agreed to be an addendum to this Agreement. For purpose of this license grant, "User" shall include any outsourced or other third-party consultants or similar personnel supporting User as part of its typical business practices, acting under User's direction and for whom User is fully responsible hereunder. User acknowledges and agrees that the license granted, for the items listed in Schedule A herein, is not a concurrent user license and that the rights granted to User in this Agreement are subject to all of the following agreements and restrictions: (i) the maximum number of Users that User authorizes to access the Service shall not exceed the number of licenses User has been granted, as set forth in Schedule A; (ii) licenses cannot be shared or used by more than one individual User; (iii) User shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Service or the aaS Materials available to any third party other than an authorized User; (iv) User shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Service, including without limitation the Training Program and/or aaS Materials that are provided as a part thereof, or access the Service or aaS Materials in order to build a similar or competitive product or service; (v) User shall not create Internet "links" to the Service or "frame" or "mirror" any part of the Service, including any content contained in the Service, on any other server or device; (vi) except as expressly stated herein, no part of the Service or aaS Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; (vii) User agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Service; (viii) User acknowledges and agrees that Vendor or its Third Party Vendors shall own all right, title and interest in and to all intellectual property rights in the Service and the aaS Materials and any suggestions, enhancement requests, feedback, or recommendations provided by Users relating to the Service or the aaS Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, and all other intellectual property rights, derivatives or improvements thereof; (ix) unauthorized use, resale or commercial exploitation of any part of the Service or aaS Materials in any way is expressly prohibited; (x) User does not acquire any rights in the Service or aaS Materials, express or implied, other than those expressly granted in this Agreement and all rights not expressly granted to User are reserved by Vendor and Third Party Vendors; and (xi) this Agreement is not a sale and does not convey any rights of ownership in or related to the Service, Training Program, Third Party Products, or aaS Materials to User.

## 4. LICENSES FROM USER

Subject to the terms and conditions of this Agreement, User grants to Vendor and its Third Party Vendors the non-exclusive, nontransferable worldwide right to copy, store, record, transmit, display, view, print or otherwise use (a) User Data solely to the extent necessary to: (i) provide the Service and aaS Materials to User and/or (ii) fulfill any utilization reporting requirements required by any grantmaking authority or agency collecting similar information, and (b) any trademarks that User may time to time provide Vendor for the purpose of including them in customization of the Services or Materials that may be subject to separate agreements between the parties ("User Trademarks"). User acknowledges and agrees that User Data and information regarding Users that is provided to Vendor and its Third Party Vendors in connection with this Agreement may be (a) processed by Vendor and its Third Party Vendors to the extent necessary to provide the Service and (b) transferred outside of the country or any other jurisdiction where Users are located. User shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all User Data and information regarding User and User's Users. User agrees that the license to the User Data shall survive termination of this Agreement solely for the purpose of storing backup User Data in accordance with the terms of this Agreement.

By providing User with the Services, Vendor does not acquire any right, title and/or interest in the content material (including but not limited to text, User-provided software, scripts, trademarks, logos, HTML coding, domain names, links, graphics, audio, video, and any data) that User makes available by means of the Services (collectively "Content"). Except as expressly set forth in the Schedules as being the responsibility of Vendor, User is solely responsible for all Content.

## 5. PROPRIETARY RIGHTS

User acknowledges and agrees that the Service and any necessary software used in connection with the Service contains proprietary and confidential information that is protected by applicable intellectual property and other laws. User further acknowledges and agrees that the content or information presented to the User through the Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by Vendor, nothing in the Service, the aaS Materials, or the Agreement shall be construed to confer any license to any of Vendor's (or its third party manufacturer's, author's, developer's, vendor's, and service provider's ("Third Party Vendors"), intellectual property rights, whether by estoppel, implication, or otherwise. Without limiting the generality of the foregoing, any names or trademarks of the Training Program listed on Schedule A and other Vendor service marks, logos and product service names are marks of Vendor (the "Vendor Marks"). User agrees not to display or use the Vendor marks, or the marks of any Third Party Vendor, in any manner without the owner's express prior written permission. Vendor reserves the right to subcontract any or all services provided hereunder to third parties.

## 6. LICENSE FEE AND TERM

The initial term ("Initial Term") of this Agreement will commence on the Effective Date and will terminate on the anniversary of the Effective Date. Each 12 month period after the Effective Date will be defined as a "Service Year", e.g. Months 1-12 will constitute Service Year 1 and months 13-24 will constitute Service Year 2, etc.).

## 7. TERMS OF SERVICE

### 7.1 *Service Extensions or Updates*

User further agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Service, and/or any new service subsequently purchased by User pursuant to an amendment accepted by Vendor referencing this Agreement will be subject to this Agreement.

### 7.2 *User Must Have Internet Access*

In order to use the Service, User must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based Content. User must also provide all equipment necessary to make (and maintain) such connection to the World Wide Web in accordance with the requirements set out in Schedule D.

### 7.3 *Email and Notices*

User agrees to provide Vendor with User's e-mail address (es), and to accept emails (or other Electronic Communications) from Vendor at the e-mail address User specifies. User further agrees the Vendor may provide any

and all required notices including legal notices to User through either e-mail (or other electronic transmission), or by mail or express delivery service in accordance with Section 14.

#### *7.4 Passwords, Access, and Notification*

User will be responsible for the confidentiality and use of User's (including its employees') passwords and user names. User will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, User Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under User's account. Vendor will act as though any Electronic Communications it receives under User's passwords, User name, and/or account number will have been sent by User. User agrees to notify Vendor if User becomes aware of any loss or theft or unauthorized use of any of User's passwords, user names, and/or account number.

#### *7.5 User's Responsibilities*

User agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. User agrees to notify Vendor immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of User Data. User acknowledges and agrees that the Service is subject to the U.S. Export Administration Laws and Regulations. User agrees that no part of the Service or information obtained through use of the Service, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to change without notice, and User must comply with the list as it exists in fact. User certifies that User is not on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. User agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Any unauthorized use of the Service may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes. The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

In addition to its responsibilities in this Agreement, User is responsible for all User responsibilities indicated in the Schedules attached hereto or entered into pursuant hereto and all other responsibilities not designated as responsibilities of Vendor.

User is solely responsible for obtaining all licenses and permissions necessary related to the Content, including, without limitation, licenses for any third-party software included in the Content.

User shall not resell the Services directly or indirectly to third parties.

#### *7.6 Transmission of Data*

User understands that the technical processing and transmission of User's Electronic Communications is fundamentally necessary to User's use of the Service. User expressly consents to Vendor's interception and storage of Electronic Communications and/or User Data, and User acknowledges and understands that User's Electronic Communications will involve transmission over the internet, and over various networks, only part of which may be owned and/or operated by Vendor. User acknowledges and understands that changes to User's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. User further understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. User agrees that Vendor is not responsible for any Electronic Communications and/or User Data which are lost, altered, intercepted or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by Vendor.

#### *7.7 Vendor's Support*

Vendor will make commercially reasonable efforts to promote User's successful utilization of the Service, but only to the extent as shown in the Schedules.

## 7.8 Confidential Information

Each party may have access to information that is confidential to the other party ("Confidential Information"). For purposes of this Agreement, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. User's Confidential Information shall include, but not be limited to, User Data. A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure without any obligation of confidentiality and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information, as established by written records. The parties agree to use commercially reasonable efforts not to make each other's Confidential Information available in any form to any third party. Notwithstanding the foregoing, User acknowledges and agrees that Vendor may disclose User's Confidential Information to its Third Party Vendors solely to the extent necessary to provide products or services under this Agreement. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the "Responding Party") shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure, so as to permit such party an opportunity to obtain a protective order or take other appropriate action. The Responding Party will cooperate in the other party's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If the Responding Party is compelled as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only that part of the Confidential Information as is required by law to be disclosed.

Notwithstanding anything to the contrary in this Agreement, Content is not included in Confidential Information as defined above. To the extent Vendor has any access to Content in the course of providing the Services, Vendor's entire obligation to keep Content confidential is stated in this Section below. Vendor shall not, intentionally (i) access User's Content or (ii) disclose User's Content to any third party, except to the extent: (a) User makes its Content publicly available, (b) as necessary for Vendor to provide, or obtain third-party supplier support for, the Services or to provide information requested by User, or (c) as specifically authorized by User in writing. Vendor's obligation to protect Content from unauthorized use, access or disclosure is: (i) to provide the Security Services specifically set forth in this Agreement and (ii) maintain and enforce the then-current standard Vendor security policies and standards applicable to the Services as practiced at the service locations from which Vendor is providing the Services to User.

## 8. SUSPENSION/TERMINATION

### 8.1 Suspension for Ongoing Harm

User agrees that Vendor may, with reasonably contemporaneous telephonic or electronic mail notice to User, suspend User's access to the Service if Vendor reasonably concludes that User's use of the Service is causing immediate and ongoing harm to Vendor or others. Vendor will use commercially reasonable efforts to resolve the issues causing the suspension of Service. User agrees that Vendor will not be liable to User or to any third party for any suspension of the Service under such circumstances as described in this Section.

### 8.2 In the Event of a Breach

- A. Either party may terminate this Agreement upon sixty (60) days' written notice to the other party in the event of a breach of any material obligation under this Agreement, provided that the alleged breach is not cured during the sixty (60) day notice period. Upon termination or expiration of this Agreement, User shall have no rights to continue use of the Service.
- B. User may cancel this Agreement, to be effective at the end of the then current Term, by providing Vendor with at least thirty (30) days' prior written notice

### 8.3 Handling of User Data In the Event of Termination

User acknowledges and agrees that following termination of this Agreement, User shall return all aaS Materials (except that it may retain a copy for archival purposes or as otherwise provided in this Agreement) to Vendor and

Vendor may immediately deactivate User's account. Furthermore, unless otherwise agreed-upon by the Parties in writing, Vendor shall remove or overwrite all applicable Content from Vendor's systems following the effective date of termination or cancellation, in accordance with Vendor's standard procedures. User agrees that Vendor shall not be liable to User or to any third party for any termination of User access to the Service or deletion of User Data, provided that Vendor is in compliance with the terms of this Section. Notwithstanding the foregoing, nothing shall preclude Vendor from maintaining one copy of User Data if required by law.

## 9. MODIFICATION/DISCONTINUATION/MAINTENANCE

### 9.1 *Modification to or Discontinuation of the Service*

Vendor reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof), provided such modification does not diminish the functionality of the Service to the User on which the User materially relies. Notwithstanding the foregoing, except for routinely scheduled down time, or as otherwise provided in this Agreement, Vendor shall use commercially reasonable efforts to notify User prior to any such modification. User acknowledges that Vendor reserves the right to discontinue offering the Service at the conclusion of User's then current Term. User agrees that Vendor will not be liable to User or any third party for any modification or discontinuance of the Service as described in this Section 9.

### 9.2 *Modification to Third Party Software and Support Cost*

In the event that Vendor incurs any increased cost from third party software licenses or annual support fees during the term of this agreement, Vendor reserves the right to pass these costs onto the User.

## 10. WARRANTIES

**WITHOUT LIMITING THE DISCLAIMERS SET FORTH IN THE NEXT SECTION. VENDOR OFFERS THE SERVICE AS IS, WHERE IS AND WITH NO WARRANTY WHATSOEVER.**

## 11. DISCLAIMER OF WARRANTIES

EXCEPT AS OTHERWISE STATED IN SECTION 10 ABOVE, VENDOR DOES NOT REPRESENT THAT USER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICE WILL MEET USER REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THE SERVICE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY VENDOR OR THE OPERATION OF THE SERVICES WILL BE SECURE OR THAT VENDOR AND ITS THIRD PARTY VENDORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING USER DATA OR USER'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED USER DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED IN SECTION 10 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VENDOR. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 10 ABOVE, THE SERVICE IS PROVIDED TO USER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR USER USE ONLY. USER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE USER'S PURPOSE.

## 12. LIMITATIONS OF LIABILITY

### 12.1 *No Consequential Damages*

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST OR CORRUPTED DATA OR CONTENT, LOST REVENUE ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE SERVICE, THE USE OF THE SERVICE OR THE INABILITY TO USE THE



SERVICE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 12.2 DIRECT DAMAGE LIMITATIONS

12.2.1 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF VENDOR OR ANY THIRD PARTY VENDORS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY LICENSE, USE, OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY User IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THERE SHALL BE ONLY ONE AGGREGATE LIABILITY CAP UNDER THIS AGREEMENT EVEN IF THERE ARE MULTIPLE CLAIMS; EACH CLAIM SHALL REDUCE THE AMOUNT AVAILABLE IN THE AGGREGATE LIABILITY CAP.

12.2.2 EXCEPT FOR A FAILURE OF VENDOR TO COMPLY WITH ITS OBLIGATIONS WITH RESPECT TO BACKUP SERVICES, AND SUBJECT TO SECTION 12.2.1 ABOVE, VENDOR SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THE LOSS OR CORRUPTION OF ANY DATA OR CONTENT WHETHER RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS OR OTHERWISE.

## 12.3 Exclusions

THE LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 12.1 AND 12.2 SHALL NOT APPLY WITH RESPECT TO: (I) DAMAGES TO PERSONS AND/OR TANGIBLE PROPERTY OCCASIONED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF USER, (II) BREACHES BY USER OF LICENSE TERMS APPLICABLE TO VENDOR PROVIDED SOFTWARE AND THIRD PARTY PRODUCTS AS SET FORTH IN SECTION 2 ABOVE, (III) USER'S UNAUTHORIZED USE OF VENDOR'S OR THIRD PARTY VENDOR'S INTELLECTUAL PROPERTY, MATERIALS OR ASSETS; (IV) DAMAGES INCURRED AS A RESULT OF A BREACH BY USER OF ITS OBLIGATIONS UNDER SECTION 7.8 THAT RESULT IN THE DISCLOSURE OF CONFIDENTIAL INFORMATION OF THE OTHER PARTY, OR (V) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION PURSUANT TO SECTION 13 (WHICH ARE SUBJECT TO THE LIMITS, IF ANY CONTAINED THEREIN). DAMAGES AS LIMITED BY THIS SECTION 12 ARE USER'S SOLE AND EXCLUSIVE REMEDY IF ANOTHER REMEDY IS PROVIDED AND SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

## 13. INDEMNIFICATION

### 13.1 Personal Injury and Property Damage

User (the "Indemnifying Party") agrees to defend at its expense and indemnify and hold harmless Vendor and its affiliates, directors, officers, employees, agents, successors and assigns (each an "Indemnified Party"), in accordance with the procedures described in this Section, from and against any and all losses, costs, damages, liabilities and expenses including without limitation, reasonable legal fees and expenses paid to or for the benefit of an unaffiliated third party (collectively, "Losses") arising from or in connection with any such third party claim for: (i) the death or bodily injury of any person caused by the negligence or willful misconduct of the Indemnifying Party; or (ii) the damage, loss or destruction of any real or tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party.

User shall also defend and indemnify Vendor and its Third Party Vendors against any and all losses incurred by Vendor and its Third Party Vendors arising out of or in connection with a claim by a third party (i) alleging that the User Data or the User Trademarks, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of User's breach of Sections 7.5 and 7.8.

User will also indemnify, defend and hold harmless Vendor, its affiliates, successors, and assigns, including the applicable officers, directors, employees, and agents thereof for damages, costs and attorneys' fees Vendor incurs from any unaffiliated third-party claim arising from User's Content or User's or any end user's use of the Services.

## 14. NOTICES

Except as otherwise provided in Section 7.4 above, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered or certified mail return receipt requested, (c) sent by overnight courier, (d) sent by facsimile (with a hard copy mailed on the same date), (e) by email whose receipt is acknowledged by an officer of the receiving party. Notices shall be forwarded to the party at the

address provided on the signature page herein. Notices shall be considered to have been given at the time of actual delivery in person, five business days after posting if by mail, one business day if by overnight courier service, or upon receipt of machine confirmation of successful transmission by facsimile or email as described herein.

## **15. SURVIVAL**

The following provisions shall survive any termination of this Agreement: Sections 5, 7.8, 11, 12, 13, 14, 15, 20 and 21.

## **16. NO ASSIGNMENT**

User may not assign this Agreement without the prior written approval of Vendor. Any purported assignment in violation of this section shall be void.

## **17. U.S. GOVERNMENT RESTRICTED RIGHTS**

Any use of the Service by or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph I(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs I(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable.

## **18. FORCE MAJEURE**

Neither party will be liable to the other for any failure or delay in the performance of such party's non-monetary obligations due to causes beyond its control, such as failure or delay caused, directly or indirectly, by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, communications line or power failures, or governmental laws, court orders, and regulations imposed after the fact.

## **19. SECURITY AND SECURITY POLICIES**

Vendor will provide the security services set forth in the Schedules (the "Security Services"), if any. Except to the extent caused by Vendor's failure to provide Security Services, Vendor is not responsible for (i) unauthorized access to User's Content, or (ii) damages arising out of unauthorized access.

User acknowledges that some of the Services may be performed by Vendor or its third-party suppliers outside the country(ies) where the Services are obtained, and information pertaining to User's use of the Services may be incorporated into Vendor's global database(s) to assist Vendor in providing the Services. User shall be solely responsible for obtaining any required consents to such off-shore support from User's employees and other end users of the Services.

Vendor will provide the Services at the Service Levels set forth in the Schedules, if any, subject to all requirements and exceptions provided in the Schedules for each Service Level. CREDITS ASSOCIATED WITH THE FAILURE TO MEET A PARTICULAR CRITICAL SERVICE LEVEL, IF ANY, ARE User'S SOLE AND EXCLUSIVE REMEDY FOR VENDOR'S FAILURE TO MEET THAT PARTICULAR CRITICAL SERVICE LEVEL.

## **20. DISENTANGLEMENT**

Upon termination, Vendor shall have no further obligation to User, and User shall be responsible for keeping any User Data it may require in separate data stores.

## **21. GENERAL PROVISIONS**

Any action related to this Agreement will be governed by Massachusetts law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Worcester, Massachusetts. This Agreement, together with the Schedules annexed hereto, and the addendums specifically reciting this Agreement, represents the parties' entire understanding relating to the use of the Service

and supersedes any prior or contemporaneous, conflicting, or additional communications. No text or information set forth on any Purchase Order Form, preprinted form or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Vendor and User as a result of this Agreement or use of the Service. The failure of Vendor to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Vendor in writing Vendor reserves the right to assign its right to receive and collect payments hereunder. Any rights not expressly granted herein are reserved by Vendor.

## Schedule A – Vendor Licensed Software

The licenses set forth below shall be available to User during the term of the agreement.

Licensed Software 3 Steps Detect Online Training Program	N/A	No. of Named Users
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These are the titles of the courses that comprise the program:

- 3 Steps Detect
- What is Cancer?
- Why Are Some People at Greater Risk?
- Identifying and Tracking Symptoms
- Prevention, Early Detection and Screening
- How to Compile Medical History
- How to Do Self-Exams
- Seeking Care
- Preparing for Doctor Appointments
- How to Advocate for Yourself
- Questions to Ask Your Doctor

## Schedule B – Product Support

During the term and during Vendors normal business hours, Vendor will use reasonable efforts to answer questions about the product; however, Vendor will not offer any support beyond what is shown in Schedule C.

## Schedule C – Application Support

### 1. SUPPORTED SOFTWARE

The Support Services includes application support for the solution comprised of the following Software:

No. of Named Users
Online program defined in Schedule A

### 2. APPLICATION SUPPORT SCOPE

Application support activities are defined as the activities required to support and maintain a solution which are excluded from the scope of standard product support (Schedule B).

The Application Support scope consists of the following activities. Other related activities may be considered in scope as agreed in writing by Vendor and User.

#### Single Point of Contact

- Serve as single point of contact for Application and infrastructure issues
- Respond to inquiries from the User concerning infrastructure availability or connectivity concerns.

## System Enhancements

Report on license compliance for Software defined in Schedule A, and notify User if license restrictions are exceeded.

## System Administration

- Support of tools and utilities.
- Perform system administration functions such as security, user/group administration, and dictionary maintenance.

# Schedule D – Infrastructure

Vendor and User have agreed on the following modules:

The application listed in Schedule A as Vendor may from time to time, update or remove certain individual training modules using criteria of its choosing.

## Assumptions

- Vendor assumes that User will provide the required user licenses to support the project.
- User will provide an appropriate high speed network connection to the internet,
- User's users will access the service via the User's network.

User does not guarantee any service level for this software and User accesses the services **AS IS** and **WHERE IS**.