

BRIGHTREE LLC TERMS AND CONDITIONS

1. **DEFINITIONS.** Unless otherwise stated in these Brightree LLC Terms and Conditions, the capitalized terms in these Brightree LLC Terms and Conditions shall have the same meanings as those set forth in the Order Form. The following terms, as used in this Agreement, shall be defined as provided below:

- a. **Agreement:** The Order Form, the Brightree LLC Terms and Conditions, any Exhibits attached hereto, any mutually-executed Statements of Work, and any other agreements for additional services which refer to these Brightree LLC Terms and Conditions or the Order Form.
- b. **Business Solutions Provider Services (“BSP Services”):** Collectively, the **System, Support, Services, and Work Product.** Administrative Services, as that term may be defined in a Brightree LLC Administrative Services Agreement, shall not be included in the BSP Services hereunder.
- c. **Brightree Business Management Software for HME (or “BMS for HME Software”):** Brightree’s proprietary business management software for HME which may be licensed to administer, manage inventory, manage CMNs, manage and facilitate billing and collections, manage customer service, manage patient information and history, manage related proprietary data related to physicians/payers/referrals, and overall management of reporting and printing tools.
- d. **Brightree Business Management Software for Pharmacy (or “BMS for Pharmacy Software”):** Brightree’s proprietary business management software for Pharmacy which may be licensed to administer, manage inventory, manage CMNs, manage and facilitate billing and collections, manage customer service, manage patient information and history, manage prescriptions, manage related proprietary data related to physicians/payers/referrals, and overall management of reporting and printing tools. It includes Home Infusion Pharmacy with support for Compounds, Injectables, TPN and Infusion prescriptions; Per Diems. Includes integration of First Databank (FDB) data and automatic weekly updates of FDB data.
- e. **Client** also known as **Licensee** shall be as defined in the Order Form.
- f. **Documentation:** Materials provided by Brightree in hard copy or electronic form describing the use and operation of the Software, including any manuals and programming tools, all as may be updated from time to time in Brightree’s sole discretion.
- g. **Error:** A failure of the Software to substantially conform to the Documentation that is reported to Brightree and that Brightree can replicate.
- h. **Error Corrections:** Modifications and additions to the Software, bug fixes, or workarounds provided by Brightree to Client.
- i. **Services:** All services, other than Support, including professional services, consulting, training, installation, implementation, and customization services to be provided by Brightree, as set forth in the Order Form, or otherwise in writing by the parties.
- j. **Software:** The BMS for HME Software or the BMS for Pharmacy Software developed and owned by Brightree that is identified in the Order Form, including any Work Product created by Brightree to conform or customize such Software to Client’s requirements, and all Error Corrections.
- k. **Support:** The support services as set forth in the “Maintenance and Support Guidelines” (which includes applicable Service Levels), the current version of which is, attached hereto as Exhibit B.
- l. **Supported Environment:** The minimum hardware, software, and connectivity configuration specified by Brightree as necessary for Client’s use of the BSP Services.
- m. **System:** Collectively, Software, and any servers or other hardware or equipment owned and operated by Brightree that are used in conjunction with the BSP Services.
- n. **Users:** Employees of Client authorized to utilize the BSP Services, with access thereto by virtue of a password or equivalent thereof.
- o. **Work Product:** Works of authorship or inventions created, invented, developed or delivered by Brightree or its contractors, either solely or jointly with Client, including any and all software, interfaces, documentation or technical information in connection with this Agreement.

2. **LICENSE; RESTRICTIONS.** Subject to the terms and conditions of this Agreement, Brightree grants to Client and its Users a non-exclusive, non-transferable, non-assignable, revocable, limited license during the Term to access and use the BSP Services over the Internet, through Brightree’s server and System, solely in the conduct of Client’s own internal business operations and in accordance with the terms of this Agreement. Client may not market, sublicense, resell, redistribute or otherwise provide or allow any party other than Client and its Users to have access to or use of the BSP Services, or to use the BSP Services to provide services to others, in whole or in part. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Client regarding the BSP Services, including any right to obtain possession of any source code or other technical material relating to the BSP Services, or regarding Brightree’s trademarks or service marks. All rights not expressly granted to Client are reserved to Brightree.

3. **SUPPORT.** Brightree will provide Support. So long as the BSP Services are not materially diminished, Brightree reserves the right, in its sole discretion, to modify, update, enhance, discontinue, add, adapt, or otherwise change (collectively “**modify**”, with any instance of one of the foregoing actions constituting a “**modification**”) any design or specification of any BSP Services or Brightree’s policies, procedures, and requirements specified in or related to this Agreement (including its Maintenance and Support Guidelines). Brightree will provide notice that a modification has been made to Brightree’s Maintenance and Support Guidelines via email to Client, which notice shall direct Client to view Brightree’s website to review the specific modification made. Client shall be solely responsible for purchasing, maintaining and securing its Supported Environment.

4. **PAYMENT.** Client shall pay to Brightree the fees set forth in the Order Form (the “**Fees**”). Except as otherwise provided in the Order Form, all Fees and other charges are due and payable to Brightree within thirty (30) days of the invoice date. Fees will be billed monthly unless otherwise provided in the Order Form and shall be due on the first day of the first month in which subsequent BSP Services will be provided. Client shall be responsible for the cost of travel and expenses for any on-site training or consulting services delivered hereunder. All amounts specified herein are net amounts to be paid and are exclusive of all duties, sales, use, or value-added taxes, customs duties, tariffs, or other similar taxes, assessments, or excises, however designated or levied, (except for taxes on Brightree’s net income), which shall be Client’s responsibility. All costs and expenses

incurred by Client in connection herewith are the sole responsibility of Client. Any amounts not paid when due shall bear interest at a nominal rate of one and one-half percent (1.5%) per month, or the maximum legal rate, if less. If Client, in good faith, disputes any amount set forth on an invoice, Client shall provide written notice of such dispute to Brightree within thirty (30) days of the date of such invoice, and shall pay any undisputed portion of such invoice when due. Client's failure to comply with this procedure shall constitute Client's approval of such invoice. Brightree may withhold performance and discontinue service until all amounts due to Brightree, or its affiliates, that are more than thirty (30) days in arrears are paid in full. Client shall reimburse Brightree for all costs of collection, including reasonable attorney's fees.

5. LIMITED WARRANTY.

- a. Brightree warrants to Client that the Software will operate substantially in accordance with the Documentation for a period of thirty (30) days after the BSP Services are accessible by Client (the "**Warranty Period**"). This limited warranty shall not apply to problems that result from (i) factors outside of Brightree's reasonable control; (ii) any failure by Client to comply with this Agreement or use the BSP Services in accordance with the Documentation or other instructions of Brightree; (iii) any actions or inactions by third parties; (iv) non-Brightree hardware, software, or equipment of Client or third parties, or errors in entering data; (v) the fault or negligence of Client or Users, operator error, improper use or misuse of the BSP Services, or any other causes external to the BSP Services or Brightree; (vi) the failure to obtain Scheduled Maintenance (as defined in Exhibit B); or (vii) any failure of Client to use the most current release of the BSP Services. Client shall be solely responsible for the accuracy and completeness of prescriptions and related data input into the Software and the System and for the use of it for fulfillment or other purposes.
- b. Any clinical information contained within the Software is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill and judgment of physicians, pharmacists or other healthcare professionals in patient care. Client acknowledges that the professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care services. Client takes full responsibility for the use of information delivered in the Software in patient care and acknowledges that the use of the Software and the System are in no way intended to replace or substitute for professional judgment of a medical professional.
- c. In the event of an Error within the Warranty Period, as Client's sole and exclusive remedy, Brightree will repair, correct, or replace (at Brightree's sole discretion and expense) the BSP Services, or any portion thereof, with a conforming version. Repair or replacement may take the form of: (i) corrected Software; (ii) corrected Documentation; (iii) instructions or procedures to bypass the problem until a more permanent correction can be implemented; or (iv) correction/clarification of the functional definition of the Services.
- d. THE LIMITED WARRANTY SET FORTH IN THIS SECTION IS MADE FOR THE BENEFIT OF CLIENT ONLY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE BSP SERVICES ARE PROVIDED "AS IS," AND BRIGHTREE MAKES NO, AND HEREBY DISCLAIMS ALL, OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE BSP SERVICES (IN WHOLE OR IN PART), THE ACCURACY OR COMPLETENESS OF ANY CODES, ALERTS, PRICES OR OTHER DATA CONTAINED WITHIN THE SOFTWARE OR ANY OTHER PRODUCTS OR SERVICES PROVIDED OR TO BE PROVIDED BY BRIGHTREE, OR OTHERWISE ARISING UNDER THIS AGREEMENT. BRIGHTREE DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE.

6. INTEGRATIONS.

- a. **ePurchasing Services.** Client may utilize Brightree ePurchasing Services to electronically order products from participating vendors by engaging with one or more available vendors and participating in an enrollment process. If Client so engages, then Client acknowledges that Brightree has no liability to Client whatsoever for the accuracy of information received or transactions made possible by its provision of the ePurchasing Services including, without limitation, catalog data, purchase orders, acknowledgements, shipping notifications and invoices. Any claims by Client related to the products ordered utilizing the ePurchasing Services are between it and the ePurchasing Vendor with whom it places orders. Brightree shall have no liability to Client related to defective products. Client agrees that it will not use or set up the ePurchasing Services to share information, such as supplier product or pricing information, with any third party that is or may be competitive in nature. Client understands and agrees that to purchase products and services from an ePurchasing Vendor through the ePurchasing Services, it may be necessary to share PHI with the respective vendor. Client grants Brightree express permission to share its PHI with its enrolled ePurchasing Vendors for the sole purpose of utilizing the ePurchasing Services to purchase products and services.
- b. **Other Integrations.** Brightree is integrated with vendors related to ePrescribe, pulse oximetry, equipment maintenance and repair, sleep therapy, credit card processing, and other functionality. Please contact your Brightree enrollment representative to engage that functionality in the Software.

To the extent Client enrolls to utilize any integrations made available by Brightree, Client acknowledges and agrees that it has a Business Associate Agreement (a "**BAA**") in place with Brightree, and to the extent necessary, it will also have a BAA in place with that vendor. Client further agrees that Brightree and each such vendor may pass Client's data between them for the sole purpose of improving the efficiency of data transfer related to patient care as instructed by Client by its enrollment in the integration. Brightree shall not be responsible or liable for the accuracy or completeness of information or data delivered to Brightree from the systems of any third-party vendor with which Client has a relationship.

7. **LIMITATION OF LIABILITY.** BRIGHTREE'S MAXIMUM LIABILITY TO CLIENT ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL BE LIMITED IN THE AGGREGATE TO THE TOTAL FEES PAYABLE BY CLIENT TO BRIGHTREE HEREUNDER WITH RESPECT TO THE BSP SERVICES PROVIDED DURING THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL BRIGHTREE, ANY PARENT, SUBSIDIARY, AFFILIATE, OR LICENSOR, OR ANY OF THEIR OFFICERS, DIRECTORS,

MANAGERS, EMPLOYEES, AGENTS, CONTRACTORS, SHAREHOLDERS, MEMBERS, OR REPRESENTATIVES, BE LIABLE TO: ANY THIRD PARTY FOR DAMAGES OF ANY KIND (EXCEPT FOR PERSONAL INJURY); OR TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, USE OR GOODWILL REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH BRIGHTREE'S DEFAULTS HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE BSP SERVICES OR OTHER PRODUCTS OR SERVICES HEREUNDER. THE PRECEDING LIMITATIONS APPLY REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF BRIGHTREE HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. IN NO EVENT SHALL BRIGHTREE BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES. THE PARTIES AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF CONSIDERATION OR OF AN EXCLUSIVE REMEDY.

8. INTELLECTUAL PROPERTY; CONFIDENTIALITY.

a. Definitions. “**Proprietary Information**” is, collectively and without regard to form, any information (including third-party information) which either party has agreed to treat as confidential, information which is provided by one party to the other which is marked confidential, trade secret or other similar marking, all software (object or source code), information regulated by state or federal law concerning disclosure or use, Confidential Information, and Trade Secrets. “**Confidential Information**” is non-public proprietary information other than Trade Secrets, of value to its owner. “**Trade Secrets**” are information which is defined as a trade secret under applicable law. For the purposes hereof with respect to Brightree, Trade Secrets include the BSP Services and the specific terms of this Agreement.

b. Brightree IP Ownership. “**Brightree IP**” means, collectively and regardless of form: all intellectual property rights in and to the Services or any derivative thereof, and all other services and materials used by Brightree or its authorized representatives, including but not limited to, all manuals, reports, records, programs, and other materials, whether or not constituting Proprietary Information, delivered to Client or developed by Brightree in its performance hereunder; and all information and materials related to all of the foregoing and to Brightree's business, including all copyrights, trademarks, service marks, logos, patents, patent applications, Proprietary Information, and other intellectual property rights pertaining thereto. Client acknowledges that Brightree owns or has the right to license use of the Brightree IP in accordance with the terms hereof, and all right, title, and interest in and to the Brightree IP are and shall remain vested in Brightree or its third-party licensors. Except for the limited license granted herein, Client does not claim and shall not assert any right, title, or interest, or other ownership or proprietary rights, in or to any Brightree IP. In the event that any rights in and to the Brightree IP do not vest in Brightree by operation of law or otherwise, then Client assigns to Brightree all its right, title and interest in and to the Brightree IP. Client shall cooperate with Brightree in the protection of Brightree's worldwide proprietary rights and interests in the Brightree IP. Client shall take no action that jeopardizes Brightree's rights in the Brightree IP, and shall keep the Brightree IP free and clear of all claims, liens, and encumbrances of Client or its customers.

c. Brightree IP Protection. Client shall not itself nor permit any other party to: (i) disassemble, decompile, decrypt, or reverse engineer, or in any way attempt to discover or reproduce the source code for, any part of the BSP Services; (ii) alter, modify, or prepare derivative works based on any Brightree IP; (iii) use any Brightree IP to create any computer program or other material that performs, replicates, or utilizes the same or substantially similar functions as the BSP Services; (iv) demonstrate or display the BSP Services or their operation for third parties; or (v) use the Brightree IP in any way other than the performance of this Agreement.

d. Confidentiality. Each party agrees that it shall: (i) maintain the other's Proprietary Information in the strictest confidence, including compliance with applicable law and reasonable remote access security requirements; (ii) not disclose, display, publish, transmit, or otherwise make available such Proprietary Information or the benefit thereof, in whole or in part, except in confidence to its own employees on a need-to-know basis; and (iii) except as expressly permitted hereunder, not copy, duplicate, replicate, transform, or reproduce such Proprietary Information. The restrictions set forth herein shall apply during the Agreement Term, and shall remain in full force and effect after any termination hereof: (i) for Trade Secrets, as long as such information qualifies as a Trade Secret under applicable law; (ii) for all other Confidential Information, during a period of five (5) years after termination hereof; and (iii) for all other Brightree IP, during such period as permitted or required by applicable law.

e. Exceptions. Anything in this Section 8 notwithstanding, neither party shall be liable to the other for damages resulting from disclosure of any Proprietary Information of the other: (i) which is lawfully received by a recipient prior to its disclosure hereunder and is not subject to a non-disclosure agreement known to the recipient; or (ii) which becomes part of the public domain through no act or failure to act by the recipient. In addition, if any law, regulation, or decree of any court or governmental unit requires disclosure of all or part of either party's Proprietary Information, the disclosing party shall have no liability to the other party for such disclosure provided it: (A) gives the other party immediate notice of such disclosure requirement and confirms such notice in writing within forty-eight (48) hours via facsimile or overnight courier; and (B) allows the other party the opportunity to defend against such disclosure.

9. INDEMNIFICATION. Brightree will indemnify, defend and hold harmless Client, its affiliates, and any of their successors, assigns, employees, officers, agents and independent contractors, from and against any and all losses, liabilities, damages, costs and expenses (including without limitation reasonable attorneys' fees) incurred by Client or such other person in connection with any claim or action by any third parties alleging that the BSP Services infringe any United States patent, copyright or trade secret. Brightree's obligation as set forth in the foregoing sentence is expressly conditioned upon the following: (i) Brightree shall be notified promptly in writing by Client of any such claim or suit; (ii) Brightree shall have sole control of the defense or settlement of any such claim or suit; (iii) Client shall cooperate with Brightree in a reasonable way to facilitate the settlement or defense of any such claim or suit; and (iv) such claim or suit does not arise from any non-Brightree modifications or from combinations of BSP Services with non-Brightree programming, hardware, software, or equipment not authorized in writing by Brightree. If any portion of the BSP Services becomes, or in Brightree's opinion is likely to become, the subject of a claim of infringement, Brightree will, at its option: (i) procure for Client the right to continue using the BSP Services; (ii) replace the BSP Services with non-infringing services or software which do not materially impair the functionality of the BSP Services; (iii) modify the BSP Services so they become non-infringing and perform in a manner substantially similar to the original BSP Services;

or (iv) refund the unearned fees Client paid Brightree for such BSP Services in accordance with the provisions of Section 4, and Client will cease any infringing use of the BSP Services. THIS SECTION 9 STATES THE SOLE AND EXCLUSIVE REMEDY OF CLIENT AND THE ENTIRE LIABILITY OF BRIGHTREE, ANY PARENT, SUBSIDIARY, AFFILIATE, OR LICENSOR, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, CONTRACTORS OR REPRESENTATIVES, FOR INFRINGEMENT HEREUNDER.

10. Term and Termination.

- a. Term.** This Agreement commences on the Effective Date and remains in effect for the Initial Term that commences on the Billing Start Date for Recurring Invoiced Fees, each as defined in the Order Form (the "**Initial Term**").
- b. Renewal.** Following completion of the Initial Term, this Agreement shall be automatically renewed for consecutive one (1) year terms (each a "**Renewal Term**", and together with the Initial Term, the "**Term**"), unless either party notifies the other party, at least ninety (90) days prior to the end of the then-current Term that it has elected to terminate this Agreement, in which event this Agreement will terminate at the end of such Term.
- c. Termination.** This Agreement may be terminated by either party as follows: (i) for material breach of this Agreement that remains uncured more than thirty (30) days after receipt of written notice of such breach, except as otherwise provided in Exhibit A; (ii) if either party makes an assignment of all or substantially all of its assets for the benefit of its creditors; or (iii) if either party (A) files a voluntary petition for relief under 11 U.S.C. 101, et. seq. (the "**Bankruptcy Code**") or (B) has an involuntary petition for relief under the Bankruptcy Code filed against it and an order for relief is entered in such case. Notwithstanding the foregoing, this Agreement may be terminated by Brightree if Client is a party to any other agreement with Brightree, or its affiliates, and fails to make payment to the respective party in accordance therewith.
- d. Effect of Termination.** Upon termination of this Agreement for any reason: (a) all rights and obligations of Client shall immediately terminate, including all licenses; and (b) within thirty (30) days of the termination of this Agreement, Client shall return, or at Brightree's option and request destroy, all originals, copies, and summaries of Brightree Proprietary Information and related materials. Upon termination of this Agreement and only if Client has paid all fees due hereunder, Client may purchase read-only access to Client's data pursuant to Brightree's then-available options. Additional services in the event of termination may be requested by Client and, if agreed to by Brightree, will be billed at Brightree's then-prevailing rates.

11. GOVERNING LAW; DISPUTE RESOLUTION. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Georgia, without regard to its rules governing conflicts of laws. The parties consent to the exclusive jurisdiction of the Superior Court of Fulton County, Georgia or the United States District Court for the Northern District of Georgia, subject to any applicable jurisdiction rules. Each party waives any objections to jurisdiction or venue in any proceeding before such courts. Neither party may assert or raise a cause of action, claim, defense or counterclaim against the other party arising under this Agreement, more than two (2) years from the date that it accrued. In the event either party is in breach, or threatens to breach any covenants of this Agreement, that party acknowledges and agrees that the other party will be greatly damaged, and such breach will be irreparable and difficult to quantify; therefore, the party seeking relief may apply to any court of competent jurisdiction in the United States or any other jurisdiction accepting jurisdiction under this specific provision of the Agreement, that, notwithstanding the provisions of this Section, will apply the laws of its own jurisdiction in determining whether relief shall be granted to the party seeking relief, for injunctive or other equitable relief to restrain such breach or threat of breach, temporary or permanent, without impairing, invalidating, negating or voiding the party seeking relief's rights to relief either at law or in equity.

12. COMPLIANCE WITH LAWS.

- a.** Client shall comply with all laws and regulations relevant to its business and obtain at its expense all necessary licenses, permits, and regulatory approvals required by any and all governmental authorities as may from time to time be required in connection with its activities related to this Agreement, including the import or export of technical data or other items, under laws of the United States and any other country affecting or regulating such import or export.
- b.** Brightree agrees to comply with the Business Associate requirements under the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), as amended from time to time, in accordance with the BAA which is attached hereto as Exhibit A.
- c.** Each party represents that it and its employees that perform services in connection with the business relationship between the parties is not presently debarred, suspended, ineligible, or excluded from participation in any state or federal health care programs. Each party will periodically check itself and its employees for listing within applicable federal and state databases and will notify the other party if it discovers that it or any of its employees has become so debarred, suspended, ineligible, or excluded (such a person, an "**Excluded Person**" or such an entity, an "**Excluded Entity**"). Neither party shall allow an Excluded Person to provide services to the other party. If a party becomes an Excluded Entity, the other party may terminate its relationship with the Excluded Entity.

13. GENERAL PROVISIONS.

- a. Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Brightree may assign this Agreement without the consent of the Client to a successor of all or substantially all of its business, stock or assets, regardless of how the transaction or series of related transactions is structured.
- b. Counterparts, Fax Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to constitute one and the same instrument. The parties hereby agree that signatures transmitted and received via facsimile or other electronic means shall be treated as original signatures for all purposes of this Agreement.
- c. Force Majeure.** Except for obligations of payment, neither party shall be liable for any delay or failure in performing hereunder if such failure arises, directly or indirectly, out of causes beyond the reasonable control of such party, including acts of God, fire, flood, strikes, war, lightning,

power surges or failures, terrorism, or acts or omissions of communications carriers. Performance shall be deferred until such cause of delay is removed, provided that the delayed party shall notify the other party of such occurrence promptly in writing.

d. Notices. All notices or other communications required hereunder shall be made in writing and shall be deemed to be effectively given if made as follows: (i) if hand-delivered, when received; (ii) if mailed, three (3) days after being deposited postage prepaid in the United States mail or its equivalent, and sent via certified mail, return receipt requested, or its equivalent; (iii) if faxed, on the date of the sending party's receipt of confirmation of transmission; or (iv) if mailed for overnight delivery, when delivered by the overnight carrier, as demonstrated by receipt confirmation provided by such carrier. Each party may change its notices address by giving written notice in the manner set forth herein.

e. Permission for Data Aggregation. Client agrees that Brightree may utilize data that comes into the possession of Brightree by virtue of its performance under this Agreement for the purpose of aggregating statistics that may be helpful for Client's benefit, for research and trend analysis, and for other lawful purposes, as determined by Brightree. Brightree shall only aggregate data in a manner that is fully compliant with HIPAA and applicable legislation regarding private personal information. The data utilized or shared pursuant to this provision that is not directly connected to the provision of BSP Services under this Agreement shall not contain any Protected Health Information, as such term is defined by HIPAA.

f. Independent Contractors. Brightree and Client are independent contractors under this Agreement, which shall not be construed to create any employment relationship, partnership, joint venture, franchisor-franchisee or agency relationship, or to authorize any party to enter into any commitment or agreement binding on the other party except as expressly stated herein. The parties have no authority to make statements, warranties, or representations, or to create any liabilities on behalf of the other.

g. Severability; Waiver. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision, and any such finding of invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event that any provision of this Agreement is held to be invalid or unenforceable, the parties agree that the remaining provisions shall remain in full force and effect, as if they had been executed by both parties subsequent to the expungement of the invalid or unenforceable provision. It is expressly understood, however, that the parties hereto intend each and every provision of this Agreement to be valid and enforceable, and hereby knowingly waive all rights to object to any provision of this Agreement. Accordingly, if any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision(s) will, rather than be stricken in their entirety, be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement shall continue in effect. Any failure or delay by either party hereto to detect, protest, or remedy any breach of this Agreement, or to exercise any right or remedy shall not constitute a waiver or impairment of any such term or condition, or be deemed a waiver of any further, prior, or future right or remedy hereunder. A waiver may only occur pursuant to the prior written express permission of an authorized officer of the other party.

h. Survival. All provisions of Sections 4, 5(d), 7, 8, 11, 12(b), and 13 of this Agreement shall survive the expiration or termination of this Agreement.

i. Entire Agreement. The Order Form, this Agreement, the Exhibits annexed hereto, any mutually-executed Statements of Work that refer to this Agreement and any other agreements for additional services that refer to this Agreement together constitute the entire agreement and understanding of the parties, whether oral or written, relating to the subject matter hereof; are intended as the parties' final expression and complete and exclusive statement of the terms hereof, superseding all prior or contemporaneous agreements, representations, promises and understandings, whether written or oral; and may be amended or modified only by an instrument in writing signed by both parties. Until executed by Brightree, this Agreement constitutes an offer by Client. In case of any conflict between this Agreement and any Exhibit, Statement of Work, or other amendment hereto, the provisions of this Agreement shall control.

14. ADDITIONAL TERMS & CONDITIONS FOR MODULES. Any modules purchased by Client shall be treated as a Service utilizing Software and the additional terms and conditions at the following link shall apply: www.Brightree.com/contracts under "Additional Terms & Conditions for Modules".

EXHIBIT A
HIPAA Business Associate Addendum

This HIPAA Business Associate Addendum (“**Addendum**”) supplements and is made a part of the Brightree LLC Terms and Conditions (“**Agreement**”) by and between Client and Brightree, and is effective as of the Effective Date of the Agreement.

RECITALS

Client wishes to disclose certain information, some of which may constitute Protected Health Information (as defined below), to Brightree pursuant to the terms of the Agreement.

Client and Brightree intend to protect the privacy and provide for the security of PHI disclosed to Brightree pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”), as amended by the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act, Public Law 111-005, and their respective implementing regulations, including the Privacy Rule, the Security Rule, the Breach Notification Standards adopted by the U.S. Department of Health and Human Services, as they may be amended from time to time, at 45 C.F.R. part 164, subpart D, as well as related state laws and/or regulations (the preceding collectively referred to as the “**HIPAA Regulations**”), all as may be amended from time to time.

The HIPAA Regulations require Client to enter into an agreement with Brightree containing specific requirements with respect to the disclosure of PHI and Electronic PHI, as set forth in, but not limited to, Title 45, Sections 164.308(b)(1), 164.310, 164.312, 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“**CFR**”), and as contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

1. Definitions.

Unless otherwise provided, all capitalized terms in the Agreement will have the same meaning as provided under the HIPAA Regulations.

- a. “**Breach**” shall have the meaning given to such term under the Security Rule, 45 CFR Section 164.402.
- b. “**Business Associate**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 160.103.
- c. “**Covered Entity**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 160.103.
- d. “**Data Aggregation**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 164.501.
- e. “**Designated Record Set**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 164.501.
- f. “**Electronic Protected Health Information**” or “**Electronic PHI**” shall have the meaning given to such term under the Privacy Rule, 45 CFR Section 160.103.
- g. “**Privacy Rule**” shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164.
- h. “**Protected Health Information**” or “**PHI**” means any information, whether oral or recorded in any form or medium, that: (i) relates to the past, present or future physical or mental condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and (ii) otherwise conforms to the meaning given to such term under the Privacy Rule, 45 CFR Section 160.103, that is created, received, maintained, or transmitted on behalf of Client by Brightree pursuant to this Addendum.
- i. “**Security Incident**”, as provided in 45 C.F.R. 164.304, shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- j. “**Security Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information codified at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- k. “**Unsecured Protected Health Information**” shall have the meaning given to such term under the Security Rule, 45 CFR Section 164.402.

2. Rights and Obligations of Brightree.

- a. **Permitted Uses.** Brightree may use Protected Health Information for the purpose of performing Brightree’s obligations under the Agreement, including this Addendum, and as permitted by law. Brightree shall not use Protected Health Information in any manner that would constitute a violation of the Privacy Rule if Brightree were to carry out one or more of Client’s obligation(s) under the Privacy Rule, in accordance with the requirements of the Privacy Rule that apply to use by Client, except that Brightree may use Protected Health Information (i) for the proper management and administration of Brightree, or (ii) to carry out the legal responsibilities of Brightree.
- b. **Permitted Disclosures.** Brightree agrees, to the extent that Brightree is to carry out one or more of Client’s obligation(s) under the Privacy Rule, to comply with the requirements of the Privacy Rule that apply to Client in the performance of such obligation(s). Brightree shall not disclose Protected Health Information in any manner that would constitute a violation of the Privacy Rule if disclosed by Client, except that: (i) Brightree may disclose Protected Health Information in a manner permitted pursuant to the Agreement, including this Addendum, and (ii) Brightree may disclose PHI for proper management and administration of Brightree or to carry out Brightree’s legal responsibilities, provided the disclosures are (a) required by law or (b) Brightree 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 Brightree of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. **Appropriate Safeguards.** In accordance with the Security Rule, Brightree shall implement such appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of Client as are necessary to prevent its use or disclosure other than as permitted by the Agreement, including this Addendum.

d. Reporting of Breach. Brightree shall report to Client any Security Incident, Breach of Unsecured Protected Health Information, or any other use or disclosure of Protected Health Information other than as provided for by the Agreement, including this Addendum, within five (5) business days of learning of such use or disclosure. Notifications related to the breach of Unsecured Protected Health Information shall be in writing and shall include: (i) the identification of each individual whose Unsecured Protected Health Information was or is reasonably believed by Brightree to have been accessed, acquired, used or disclosed during the Breach; and (ii) any other available information that Client is required to include in notification to the individual under 45 CFR 164.404(c), such as a brief description of the incident and the nature of the information disclosed, and the status of Brightree's investigation of the matter and mitigation efforts. Brightree shall take prompt corrective action to cure any deficiencies in its systems as required by applicable federal and state laws and regulations.

e. Brightree's Agents. Brightree shall ensure that any agents, including subcontractors, to whom it provides Protected Health Information, agree in writing to the same restrictions and conditions that apply to Brightree with respect to such PHI. Brightree shall ensure that any such agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Client.

f. Access to Protected Health Information. To the extent Brightree maintains PHI in a Designated Record Set, if an Individual makes a request for access directly to Brightree, Brightree shall, within ten (10) business days, forward such request in writing to Client. Brightree shall make Protected Health Information maintained by Brightree in Designated Record Sets, if any, available to Client for inspection and copying to enable Client to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524. Client shall be responsible for making all determinations regarding the grant or denial of an Individual's request for PHI and Brightree will make no such determinations. Except as required by law, only Client will release and be responsible for releasing PHI to an Individual pursuant to such a request.

g. Amendment of PHI. To the extent Brightree maintains PHI in a Designated Record Set, if an Individual makes a request for an amendment of his or her PHI or record directly to Brightree, Brightree shall, within ten (10) business days, forward such request in writing to Client. Brightree shall make such Protected Health Information available to Client for amendment and incorporate any such amendment to enable Client to fulfill its obligations under the Privacy Rule, 45 CFR Section 164.526. Client shall be responsible for making all determinations regarding the grant or denial of an Individual's request for an amendment, and except as required by law, Brightree will make no such determinations.

h. Accounting Rights. Within ten (10) days of notice by Client of a request for an accounting of disclosures of Protected Health Information, Brightree and its agents or subcontractors shall make available to Client the information required to provide an accounting of disclosures to enable Client to fulfill its obligations under the Privacy Rule, 45 CFR Section 164.528. Client will be responsible for preparing and delivering the accounting to the Individual. Except as required by law, Brightree will not provide an Accounting of its Disclosures directly to any Individual. As set forth in, and as limited by, 45 CFR Section 164.528, Brightree shall not be required to provide an accounting to Client of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR Section 164.506; (ii) to individuals of Protected Health Information about them as set forth in 45 CFR Section 164.502; (iii) to persons involved in the individual's care or for other notification purposes as set forth in 45 CFR Section 164.510; (iv) for national security or intelligence purposes as set forth in 45 CFR Section 164.512(k)(2); (v) to correctional institutions or law enforcement officials as set forth in 45 CFR Section 164.512(k)(5); or (vi) as part of a limited data set in accordance with 45 CFR Section 164.514(e). Brightree agrees to implement a process that allows for an accounting to be collected and maintained by Brightree and its agents or subcontractors for at least six (6) years prior to the request, but not before the effective date of the Agreement; however, to the extent that Brightree uses or maintains electronic health records and the HIPAA Regulations require that those records be maintained for only three (3) years, Brightree shall only be required to maintain them for that period. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Health Information and, if known, the address of the entity or person; (iii) a brief description of Protected Health Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure, as applicable.

i. Governmental Access to Records. Brightree shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to the Secretary of the U.S. Department of Health and Human Services or his or her agents or authorized designees for purposes of determining compliance with the Privacy Rule.

j. Minimum Necessary. Brightree shall only request, use and disclose, to the extent practicable, the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.

k. Audits, Inspection and Enforcement. Within thirty (30) days of a written request by Client, Brightree shall allow Client to conduct a reasonable inspection of the facilities, systems, policies and procedures relating to the use or disclosure of Protected Health Information pursuant to this Addendum for the purpose of determining whether Brightree has complied with this Addendum; provided, however, that: (i) Brightree and Client shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Client and its agents shall protect the confidentiality of all confidential and proprietary information of Brightree to which Client has access during the course of such inspection; and (iii) Client shall execute a nondisclosure agreement with terms mutually agreed upon by the parties, if requested by Brightree.

l. Remuneration in Exchange for Protected Health Information. Brightree may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by Client or by the various exceptions contained in the HIPAA Regulations, as may be amended from time to time, or for purposes such as Brightree functions under the Agreement, treatment of the subject Individual, provision of such Individual's Protected Health Information to him or her, research activities where the price charged reflects only the cost of preparation and transmittal of the data, or public health activities.

3. Obligations of Client.

Changes in Authorization. Client shall inform Brightree, in a timely manner, of any changes in, or withdrawal of, any authorization provided to Client by any Individual pursuant to 45 CFR § 164.508, to the extent that such changes or withdrawal may affect Brightree's use or disclosure of PHI. In addition, Client shall notify Brightree, in a timely manner, of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Brightree's use or disclosure of PHI. Client shall promptly notify Brightree of any breach by Client of any obligation under the HIPAA Regulations as such breach relates to PHI as defined herein. Client shall not request of Brightree that it use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if done by Client,

and Brightree is not required to use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if so used or disclosed by Client.

4. Termination.

a. Material Breach. A breach by Brightree of any material provision of this Addendum shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by Client pursuant to its terms.

b. Reasonable Steps to Cure Breach. If Client knows of a pattern of activity or practice of Brightree that constitutes a material breach or violation of Brightree's obligations under the provisions of this Addendum and does not terminate this Agreement pursuant to Section 4(a) above, then Client shall take reasonable steps to cure such breach or end such violation as applicable. If Client's efforts to cure the breach or end the violation are unsuccessful, Client may (i) terminate the Agreement, if feasible, or (ii) if termination of the Agreement is not feasible, Client may report Brightree's breach or violation to the Secretary of the Department of Health and Human Services.

c. Effect of Termination. Upon termination of the Agreement for any reason, Brightree shall return or destroy all Protected Health Information that Brightree still maintains in any form, and shall retain no copies of such Protected Health Information. If Brightree determines that return or destruction of PHI is not feasible, the parties shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(e) and 3 of this Addendum to such information, and Brightree shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy of health information are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Regulations or other applicable laws. Either party may terminate this Agreement upon thirty (30) days prior written notice in the event that the other party: (i) does not promptly enter into negotiations to amend this Addendum when requested pursuant to this Section 5; or (ii) does not enter into an amendment to this Addendum providing assurances regarding the safeguarding of PHI sufficient to satisfy the standards and requirements of the HIPAA Regulations.

6. No Third-Party Beneficiaries.

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Client, Brightree and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

7. Interpretation.

The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict, or appear inconsistent, with any provision in this Addendum. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with the HIPAA Regulations. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies, and is consistent, with the HIPAA Regulations.

EXHIBIT B
Brightree Maintenance and Support Guidelines

1. **Support:** Maintenance and support service is not intended to replace or in any way augment training on the Software. If Client is having problems utilizing the System due to inadequate user knowledge, Client should contact Brightree to arrange for further user training. During the Term of the Agreement, Support provided to Client shall comprise the following:

- a) **Hot Line** – Brightree shall provide a telephone number for Client’s use 24 hours a day, 7 days a week. Direct customer service and technical support will be available Monday through Friday 8:00 a.m. to 8:00 p.m., Eastern Time. On-call support will be available for calls made outside these hours. Messages placed on the on-call system will be answered within 60 minutes by on-call Brightree personnel. Client must designate a finite number of “Power Users” (based on the table below) who shall be entitled to contact Hot Line support. Power Users must complete all Brightree initial training successfully. Client’s non-Power Users must funnel all support issues to the Brightree Hot Line via a Power User.

Licensed # of Concurrent Users	Maximum Allowable # of Power Users for Hot Line Access
1-6	3
7-19	4
20+	5

- b) **Online Error Reporting** – Client will have an online error reporting tool allowing all non-emergency errors to be reported to Brightree and staged for response. Brightree will monitor daily, Monday thru Friday, 8:00 a.m. to 8:00 p.m. ET, the online error reporting log and communicate back to Client within 24 business hours the plan of action for evaluation and correction.
- c) **Error Correction** – Brightree will use commercially reasonable efforts to correct all verifiable and reproducible Errors in the System reported by Client in writing to Brightree. Brightree will utilize remote diagnostic procedures whenever possible for Error diagnosis and Error Correction. Brightree may not issue Error Corrections for all Errors.

2. **Problem Resolution:** All problems, Errors, or issues communicated to Brightree will be managed according to the following decision tree:

- a) **Determination of Cause** – Brightree will determine as quickly as possible the cause of the problem, Error, or issue.
- b) **Brightree Problem** – If the problem, Error or issue is determined to be a problem in the System or Software, Brightree will inform Client within 24 hours after such determination and advise Client of the Error classification and any work-around, if applicable, to correct the problem, Error, or issue. There will be no charge for this support.
- c) **Client Problem** – If the problem, error or issue is not related to the Software or System, Brightree will provide a plan to the Client for correction within 72 hours after such determination. The charge for the determination of a non-Brightree problem is \$250.00 per incident.

3. **Service Levels:** The System will be available 24 hours a day, 365 days per year, except for Downtime, Scheduled Maintenance, New Functionality release or as otherwise provided in this Agreement.

- (i) **“Downtime”** shall mean sustained access loss within the System for 60 consecutive minutes due to the failure of Brightree to provide the System for such period. Downtime shall not include any access loss or network unavailability during Scheduled Maintenance or New Functionality Release. Client acknowledges and represents that the System is not used in connection with a time-critical or mission-critical function of its business and that, therefore, Downtime will not result in any significant damage to the business of the Client for which Brightree is liable to Client.
- (ii) **“Scheduled Maintenance”** – the System may be unavailable for up to ten (10) hours per month in order for Brightree to provide maintenance and upgrades to the System.
- (iii) **“New Functionality Release”** – the System may be unavailable for a period of 8-12 consecutive hours during a new release of functionality, including service packs and “hot fixes”. Announcements regarding the timing of the release and the unavailability of the System will be provided to Client at least one week in advance. New functionality deployments will be executed during off-hours over the weekend unless an emergency necessitates otherwise.

4. **Exclusions:** Notwithstanding anything in the Agreement or Brightree’s Maintenance and Support Guidelines to the contrary, Brightree shall have no obligation to provide Support to any person other than Client’s authorized personnel trained on the System, and shall have no responsibility or liability of any kind, whether for breach of warranty, contract or otherwise, arising or resulting from: (a) any version of the System other than the then-current unmodified version; (b) any problems which are not Errors; (c) Client’s failure to correctly install or operate any updates or other modifications to the System provided by Brightree; (d) problems caused by failed Internet connections or other hardware, software or equipment that is not owned, controlled or operated by Brightree, or by failure by Client to provide and maintain the Supported Environment or security authorization; (e) nonconformities resulting from misuse, abuse, negligence, revision, modification, or improper or unauthorized use of all or any part of the BSP Services or Software, or problems caused by Client’s or other third-party products, services or equipment; (f) modification, amendment, revision, or change to the BSP Services or Software by any party other than Brightree or Brightree’s authorized representatives; or (g) data or data input, output or integrity, all of which shall be deemed under Client’s exclusive control. Any use of or reliance on data or data output are Client’s sole responsibility.