

Cloud Services Agreement

This Cloud Services Agreement (“**Agreement**”) is made as of the last signature date below (“**Effective Date**”) by and between the entity identified below (“**Customer**”) and CareDox, Inc. (“**CareDox**”).

1. **Overview.** CareDox is a care coordination platform for parents and schools. It automates and streamlines information collection and access to improve child safety and healthcare outcomes. Specifically, it affords parents the ability to better manage and share medical information. Our systems are designed to protect the confidentiality, integrity, and availability of that information, including compliance with applicable laws and regulations.

2. **Term.** This Agreement will become effective on the first date Customer accesses the Services, as defined below (the “**Effective Date**”). The initial term (“**Initial Term**”) of this Agreement will begin on the Effective Date and will continue thereafter for three years (3). The Initial Term and any Renewal Terms are referred to, collectively, as the “**Term**.”

3. **Services.** Subject to the terms and conditions of this Agreement, CareDox grants Customer and its End Users (as defined below) a non-exclusive, non-transferable license to access and use CareDox’s hosted services (the “**Services**”), as described in Exhibit A, solely for Customer’s internal business purposes. To the extent any CareDox software is provided to Customer for installation on its systems for use in connection with the Services, the CareDox software will be included in the definition of Services and subject to the foregoing license. All software may only be used in support of Customer’s use of the Services and for no other purpose. For purposes of this Agreement, “**End Users**” means Customer’s employees, parents of Customer students, Customer students contractors and representatives who are authorized to access the Services on Customer’s behalf.

4. **Restrictions.** Customer and its End Users may only use the Services as described in this Agreement and in the then current documentation made generally available by CareDox to its customers regarding the Services (the “**Documentation**”). Customer is responsible for ensuring its End Users comply with all relevant terms of this Agreement and any failure to comply will constitute a breach by Customer. Except as expressly authorized by this Agreement, Customer will not, and will not allow any End User or other third party to, (i) permit any third party to access or use the Services other than an End User; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the trade secrets embodied in the Services, except to the extent expressly permitted by applicable law; (iii) use the Services or any CareDox Confidential Information to develop a competing product or service; (iv) use any Service, or allow the transfer, transmission, export, or re-export of any Service or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency; or (v) remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Documentation and Service, including any screen displays, etc., or any other products or materials provided by CareDox hereunder. Under no circumstances will CareDox be liable or responsible for any use, or any results obtained by the use, of the Services in conjunction

with any services, software, or hardware that are not provided by CareDox. All such use will be at Customer’s sole risk and liability.

5. **Availability.** The hosted elements of the Services will be available for remote access 99.5% of the time each calendar month of the Term, excluding Excused Outages (as defined below) (“**Availability**”). Downtime as a result of any causes beyond the control of CareDox or that are not reasonably foreseeable by CareDox, including, without limitation by any of the events noted below are excluded from the Availability calculations (collectively, “**Excused Outages**”):

a. Customer environment issues affecting connectivity or interfering with the Services, including without limitation, Customer’s telecommunications connection or any other Customer software or equipment, Customer’s firewall software, hardware or security settings, Customer’s configuration of anti-virus software or anti-spyware or malware software, or operator error of Customer;

b. Any third party software, hardware, or telecommunication failures, including Internet slow-downs or failures;

c. Force major events including, without limitation fire, flood, earthquake, elements of nature or acts of God; third party labor disruptions, acts of war, terrorism, riots, civil disorders, rebellions or revolutions; quarantines, embargoes and other similar governmental action; or any other similar cause beyond the reasonable control of CareDox;

d. Issues related to third party domain name system (DNS) errors or failures;

e. Scheduled maintenance of the Services, conducted on a regular basis, of which CareDox will give Customer a minimum of twenty-four (24) hours advanced notice by email or other pre-approved notification; and

f. Emergency maintenance of the Services, not to exceed four (4) hours in any month, for which Customer may not receive advanced notice.

In the event CareDox fails to achieve the Availability requirement, CareDox will use commercially reasonable efforts to correct the interruption as promptly as practicable. In the event CareDox fails to achieve the Availability requirement in two consecutive months during the term of this Agreement, Customer may terminate this Agreement within thirty (30) days of the end of the second consecutive month, without further obligation.

6. **Information Security.** Consistent with any law or regulation applicable to the Services and CareDox’ then current practices and procedures, CareDox will maintain and enforce administrative, technical, and physical safeguards to reasonably protect the confidentiality, availability, and integrity of Customer’s Confidential Information and the Customer Data. CareDox will promptly report to Customer any compromise of security that it becomes aware of with regard to Customer Data.

7. **Connectivity.** Customer and End Users are solely responsible for all telecommunication or Internet connections required to access the Services, as well as all hardware and software at

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Customer's site. In addition to other third party costs that may apply, Customer agrees to pay for all telecommunications costs, fees and services required for and dedicated to Customer's access to the Services.

8. Proprietary Rights. Customer acknowledges and agrees that (i) all Services are protected by intellectual property rights, as applicable, of CareDox and its vendors/licensors and that Customer has no right to transfer or reproduce any Services or any software provided with the Services or prepare any derivative works with respect to, or disclose Confidential Information (as defined in Section 14 (Confidentiality)) pertaining to, any Services or any part of them and (ii) that CareDox owns all right, title, and interest in and to the Services, including any changes or modifications made to the Services performed in connection with this Agreement, together with all ideas, architecture, algorithms, models, processes, techniques, user interfaces, database design and architecture, and "know-how" embodying the Services. Under no circumstances will Customer be deemed to receive title to any portion of the Services, title to which at all times will vest exclusively in CareDox. This is not a "work made for hire" agreement, as that term is defined in Section 101 of Title 17 of the United States Code. Customer will preserve all Services from any liens, encumbrances, and claims of any individual or entity. Customer will not use any Confidential Information disclosed by CareDox to Customer in connection with this Agreement to contest the validity of any intellectual property rights of CareDox or its licensors. Any such use of CareDox' Confidential Information will constitute a material, non-curable breach of this Agreement.

9. Customer Data. Customer grants CareDox a non-exclusive, world-wide, royalty-free license to use the documents, information, graphics, data, content, and other materials input by Customer into the Services (the "Customer Data") for purposes of executing services described in this Agreement. Customer will be responsible for obtaining all rights, permissions, and authorizations to provide the Customer Data to CareDox for use as specified under this Agreement. Except for the license granted in this Section, nothing contained in this Agreement will be construed as granting CareDox any right, title, or interest in the Customer Data. Customer grants CareDox a non-exclusive, perpetual, irrevocable, fully-paid-up, royalty free license to use, copy, distribute, and otherwise exploit statistical and other aggregated data derived from Customer's use of Services (the "Aggregated Data") for CareDox' business with regard to improving healthcare outcomes and related activities, including the provision of products and services to CareDox' customers; provided the Aggregated Data is combined with similar data from CareDox' other customers and does not include (directly or by inference) any information identifying Customer or any identifiable individual. The Aggregated Data will not be considered Customer's Confidential Information. **Feedback.** Customer may provide suggestions, comments or other feedback (collectively, "Feedback") to CareDox with respect to its products and services, including the Services. Feedback is voluntary. CareDox may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Customer's intellectual property rights to make use of the Feedback, Customer grants CareDox an irrevocable, non-

exclusive, perpetual, fully-paid-up, royalty-free license to use the Feedback in connection with CareDox' business, including the enhancement of the Services. For the avoidance of doubt, all such Aggregated Data will be de-identified in conformance with HIPAA, including 45 CFR § 164.514, and the Family Educational Rights and Privacy Act ("FERPA").

10. Retrieval of Customer Data. At any time during the Term and for a period of thirty (30) days thereafter, Customer may use the inherent functionality of the Services to download a copy of the Customer Data at no additional charge.

11. Support and Maintenance. During the Term, CareDox will provide Customer with reasonable telephone support during CareDox's then current business hours. CareDox will provide Customer Service updates and bug fixes that CareDox in its sole discretion makes generally available to its other similarly situated licensees at no charge. Such new or different functionality may be purchased by Customer, in its discretion, at CareDox' then current pricing. CareDox will use commercially reasonable efforts to correct reproducible failures of the Service to perform in substantial accordance with their then current Documentation.

12. Warranties.

12.1. Customer Warranty. Customer represents and warrants that (a) it has full power, capacity, and authority to enter into this Agreement and to grant the license set forth in Section 9 (Customer Data); (b) any Customer Data provided by Customer to CareDox for use in connection with the Services does not and will not infringe the intellectual property, publicity, or privacy rights of any person and is not defamatory, obscene, or in violation of applicable foreign, federal, state and local laws, rules and regulations (including but not limited to applicable policies and laws related to spamming, privacy, and consumer protection) (collectively, "Applicable Law"); and (c) its use of the Services will be in compliance with all Applicable Law.

12.2. CareDox Warranty. During the Term, CareDox represents and warrants (i) the Services will substantially comply with the Documentation; (ii) it shall use commercially reasonable efforts to screen the Services for viruses, Trojan horses, worms, and other similar intentionally harmful or destructive code; and (iii) it shall comply with Applicable Law in performing this Agreement. In the event of a breach of the warranty in Section 12.2(i), CareDox' sole and exclusive liability and Customer's sole and exclusive remedy will be to perform the defective Service again. In the event CareDox is unable through reasonable efforts to correct the defective Service within thirty (30) days from receipt of notice from Customer of the breach, Customer may elect to terminate this Agreement.

12.3. Disclaimer of Warranties. EXCEPT AS PROVIDED IN SECTION 12.2 (CAREDOX WARRANTY), THE SERVICES ARE PROVIDED "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. CAREDOX AND ITS VENDORS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF

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INFORMATION, AND TITLE/NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CAREDOX OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF CAREDOX' OBLIGATIONS HEREUNDER. THE SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. CUSTOMER ACKNOWLEDGES AND AGREES THAT CAREDOX AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER'S DATA, WEBSITES, COMPUTERS, OR NETWORKS. CAREDOX WILL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES. CUSTOMER IS RESPONSIBLE FOR PRESERVING AND MAKING ADEQUATE BACKUPS OF ITS DATA.

13. **Indemnification.** The CareDox shall defend, indemnify, and hold harmless the, Customer and its respective elected/appointed officials, employees, departments, agencies, agents and volunteers (collectively the "Indemnified Parties") against any third party liabilities, claims, demands, suits (and any costs, judgments and settlement amounts associated therewith) that (i) breach of CareDox's confidentiality and security obligations under this Agreement that results in an authorized use of or access to Customer Data; or (ii) the use of the Services as authorized in this Agreement misappropriates a trade secret or infringes a patent, copyright, or trademark in any of the jurisdictions within which the Services are provided, provided CareDox receives (i) prompt notice in writing of such claim (but late notice shall not void CareDox's obligations in this Section unless the lateness itself prejudiced CareDox's ability to fulfill its obligations); (ii) sole control over the defense and settlement thereof; and (iii) reasonable cooperation from Indemnified Parties, as applicable, at CareDox's expense in response to a CareDox request for assistance. Should any Services become, or in CareDox's opinion be likely to become, the subject of such a claim, CareDox shall, at its option and expense, (a) procure for Indemnified Parties the right to make continued use thereof in accordance with this Agreement; (b) replace or modify the affected Services so that they become non-infringing but with substantially equivalent functionality and performance; or (c) if neither (a) nor (b) are reasonably available, terminate this Agreement. CareDox shall have no liability for alleged infringement based on (1) use for a purpose or in a manner for which the Services was not designed; (2) use of any older version of Services software when use of a newer revision made available by CareDox to Indemnified Parties would have avoided the infringement; (3) any modification made without CareDox's written approval; or (4) use of the Services in breach of this Agreement.

14. **Confidentiality.** Each party may disclose to the other certain non-public information or materials relating to a party's products, intellectual property, business, marketing programs and efforts, personally identifiable information of the party's personnel and

customers, and other confidential information and trade secrets ("**Confidential Information**"). Confidential Information does not include information that: (a) is or becomes publicly available through no breach by the receiving party of this Agreement; (b) was previously known to the receiving party prior to the date of disclosure, as evidenced by contemporaneous written records; (c) was acquired from a third party without any breach of any obligation of confidentiality; (d) was independently developed by a party hereto without reference to Confidential Information of the other party; or (e) is required to be disclosed pursuant to a subpoena or other similar order of any court or government agency, provided, however, that party receiving such subpoena or order shall promptly inform the other party in writing and provide a copy thereof, and shall only disclose that Confidential Information necessary to comply with such subpoena or order. Except as expressly provided herein, the receiving party will not use or disclose any Confidential Information of the disclosing party without the disclosing party's prior written consent, except disclosure to and subsequent uses by the receiving party's employees or consultants on a need-to-know basis, provided that such employees or consultants have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as the receiving party's obligations under this Section. The receiving party agrees to use at least the same care and precaution in protecting such Confidential Information as the receiving party uses to protect the receiving party's own Confidential Information, and in no event less than reasonable care. Each party acknowledges that due to the unique nature of the other party's Confidential Information, the disclosing party will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

15. **Limitation of Liability and Damages.** NEITHER CAREDOX NOR ITS VENDORS AND LICENSORS WILL HAVE ANY LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, SALES, TRADING LOSSES, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING USE OF OR INABILITY TO USE THE SERVICES. THE TOTAL LIABILITY OF CAREDOX AND ITS VENDORS AND LICENSORS TO CUSTOMER OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR USE OF THE SERVICES IN CONNECTION WITH ANY CLAIM OR TYPE OF DAMAGE (WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE) WILL NOT EXCEED THE PORTION OF THE GRANT ACTUALLY RECEIVED BY CAREDOX ATTRIBUTABLE TO CUSTOMER. THIS LIMITATION OF LIABILITY WILL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

16. **Termination.**

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16.1. **Termination.** This Agreement will terminate (a) on the thirtieth (30th) day after either party gives the other written notice of a breach by the other of any material term or condition of this Agreement, unless the breach is cured before that day; or (b) upon written notice by either party, immediately, if (i) a receiver is appointed for the other party or its property; (ii) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes a general assignment for the benefit of its creditors; or (iii) any proceedings (whether voluntary or involuntary) are commenced against the other party under any bankruptcy or similar law and such proceedings are not vacated or set aside within sixty (60) days from the date of commencement thereof. The following provisions will survive termination or expiration of this Agreement: 8 (Proprietary Rights), 12.2 (Disclaimer of Warranties), (for claims accruing prior to termination), 14 (Confidentiality), 15 (Limitation of Liability and Damages), 16 (Termination), and 17 (General Provisions).

16.2. **Suspension of Services.** Notwithstanding any other provision of this Agreement, CareDox may, in its sole discretion, suspend Customer's access to the Services for any of the following reasons (a) to prevent damages or risk to, or degradation of, the Services; (b) to comply with any law, regulation, court order, or other governmental request; or (c) to otherwise protect CareDox from potential legal liability. CareDox will use reasonable efforts to provide Customer with notice prior to or promptly following any suspension of the Services. CareDox will promptly restore access to the Services as soon as the event giving rise to suspension has been resolved. This Section will not be construed as imposing any obligation or duty on CareDox to monitor use of the Services.

17. CareDox shall not assign this agreement without the written consent of the Customer. Notwithstanding the foregoing, CareDox may assign this Agreement to a successor entity in the event of a merger, acquisition or sale of all or substantially all of its assets.

18. **General Provisions.** This Agreement will be construed, interpreted, and performed exclusively according to the laws of the State of New York, United States of America, without giving effect to any principles of conflicts of law. Any action at law or in equity arising out of or directly or indirectly relating to this Agreement may be instituted only in the Federal or state courts located in New York, New York. The parties consent and submit to the personal jurisdiction of those courts for the purposes of any action related to this Agreement, and to extra-territorial service of process. Regardless of any statute or law to the contrary, any claim or cause of action that Customer may have arising out of or related to this Agreement must be filed within one (1) year after the claim or cause of action arose. This Agreement constitutes the entire understanding and agreement between the parties with respect to the transactions contemplated in this Agreement and supersedes all prior or contemporaneous oral or written communications with respect to the subject matter of this Agreement, all of which are merged in this Agreement. This Agreement may not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event any provision of this

Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement will remain valid and enforceable according to its terms. Any failure by either party to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. This Agreement may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent) and Customer's acceptance will be deemed binding between the parties. Neither party will contest the validity or enforceability of this Agreement, including under any applicable statute of frauds, because it was accepted or signed in electronic form. Electronically maintained records when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES WILL REMAIN IN EFFECT.**

Customer

By: 

Name: Tim G. Smith

Title: Chief Information Officer

Date: 6/2/15

Address: 2063 N 1200 E
North Logan, UT 84341

CareDox, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Address: _____

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EXHIBIT A

SERVICES and FEES

Fees: School District will NOT be charged for the first three (3) years of the contract due to the grant CareDox received to increase adolescent immunization rates in the US. This arrangement is valid only provided that School District will launch the CareDox product for the 2015-2016 school year.

CareDox Services: A HIPAA-compliant medical record system for students that includes an electronic form for easy health information collection, an admin tool to view and manage the status of the health information collection process.

CareDox will make the services available as defined under this Agreement within ninety days of the Effective Date.

CareDox Obligations: In addition to providing services directly to End Users, CareDox will also render certain:

- Online storage for designated health information of End Users
- Support electronic entry of information into the School's form and the ability to upload forms in PDF format
- Provide means for physicians to transmit health records via fax or other agreed upon electronic means for inclusion in End User account information
- Digitize physician reports from physicals for access as part of the user account files in the CareDox Services
- Make certain CareDox Services available for access and use pursuant to its then current end user terms to parents and Schools
- Schools will be able to log nurse visits and create reports such as all medications being given
- All parents will be required to be bound by CareDox then current End User agreement and establish a CareDox account.
- Using existing information in the relevant user's account, when available, CareDox will pre-populate user information in relevant fields.

Joint Obligations: The Parties will have the following joint obligations:

- Coordinate support to End Users, including warm hand-offs of support calls. Each Party will be responsible for first level support for End users of its own services and will coordinate second level support.
- Comply with all laws and regulations applicable to its performance, including those relating to the confidentiality and security of personally identifiable information.

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EXHIBIT B

INFORMATION SECURITY

We take the security of our systems and your data very seriously. We have implemented a variety of measures designed to protect your data and comply with all laws and regulations applicable to our hosting of that data.

Use of Your Data. Your data will be used solely as permitted under our Cloud Services Agreement (“**Agreement**”). Any other use of the data will require your prior consent.

Protection of Your Data. We will use administrative, technical and physical safeguards designed to protect the confidentiality of your data as required by federal and state laws and regulations applicable to CareDox. These applicable laws may include, but are not limited to, the federal Social Security Act; the Family Educational Rights and Privacy Act; the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any other applicable federal or state data privacy or security laws and any regulations promulgated thereunder. We will deploy and maintain reasonable technical and physical security measures to ensure the confidentiality, integrity and availability of your data. We will periodically review and update our security measures to comply with new or different legal and regulatory requirements and to mitigate new threats and risks as they are identified.

These security measures will include, at a minimum:

- Establish and maintain a formal, documented information security program, including security policies, standards and procedures (collectively “**Information Security Policy**”). The Information Security Policy will be communicated to our personnel and contractors in a relevant, accessible, and understandable form and will be regularly reviewed and evaluated to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks;
- Screen all personnel contacting your data for potential security risks and require all employees, contractors, and subcontractors to sign an appropriate written confidentiality/non-disclosure agreement;
- If your data is transferred across the Internet, any wireless network (*e.g.*, cellular, 802.11x, or similar technology), or other public or shared networks, it will be protected using appropriate cryptography that employs published, verifiable encryption algorithms with key lengths sufficient to protect the information;
- Network access to both internal and external networked services will be controlled, including, but not limited to, the use of properly configured firewalls;
- Limiting access to your data to those who have need to know in furtherance of the Agreement;
- All relevant systems will be monitored to detect deviation from access control policies and identify suspicious activity; and
- Use of access control measures, including passwords and user authentication, to protect all relevant systems.

Disaster Recovery; Business Continuity. We have developed and implemented a disaster recover/business continuity plan (the “**Plan**”) for the Services. On request, we will furnish you with a copy of the Plan, which shall be deemed our confidential Information. Consistent with our then current practices, we will periodically test and re-assess the Plan and, on request, provide you with copies of any updated versions of the Plan.