

## NDDCLOUD TERMS AND CONDITIONS

### Introduction and Overview

Thank you for choosing nddCloud. We provide software-based services that (the “**nddCloud Services**”), any accompanying documentation, and any updates to such software or documentation (collectively, “**Software**”). ndd Medical Technologies Inc., along with its parent, subsidiaries, affiliates, or related companies, are referred to in these provisions as “**we**” or “**us**.”

When you use the nddCloud Services, you enter into a binding contract with us. If you are an individual acting on your company’s or client’s behalf, you accept these provisions on their behalf, and the terms “**Client**” and “**you**” will refer to you or your company.

### Agreement to These Terms

To access and/or use the nddCloud Services, you acknowledge and agree:

- to the following Terms and Conditions;
- to ndd’s Business Associate Agreement located at ([\\_\\_https://niddmed.com/terms-and-conditions/\\_\\_\\_](https://niddmed.com/terms-and-conditions/)) (the “**BAA**”);
- to ndd’s Privacy Policy located at ([\\_\\_https://niddmed.com/terms-and-conditions/\\_\\_\\_](https://niddmed.com/terms-and-conditions/)) (the “**Privacy Policy**”);s
- you are at least 18 years of age;
- you are capable of forming a binding contract with ndd; and
- you are not a person who is prohibited from using the nddCloud Services under the laws of the U.S. or any other applicable jurisdiction.

1. **Agreement.** As referred to herein, “**Agreement**” means the nddCloud Subscription Agreement, consisting of the executed subscription order, these nddCloud Terms and Conditions, the separate BAA that is incorporated by reference, and any additional order or proposal executed by the parties that incorporates the Subscription Agreement, together with the Privacy Policy, which may be periodically updated as needed.
2. **nddCloud Services.** The subscription order that incorporates these Terms and Conditions by reference (the “**Subscription Order**”) sets forth the nddCloud Services that we have agreed to provide and you have agreed to purchase. During the Term (defined below), we will provide the non-exclusive right for your employees, independent contractors and affiliated physicians who have been assigned a user ID and password (“**Authorized Users**”) to access and use the nddCloud Services for your internal business purposes. See the Subscription Order for additional information and terms related to the nddCloud Services.
3. **Support Services.** We will provide support services to you and your Authorized Users dependent on the specific purchase contract and warranty upon purchase of the nddCloud-connected medical device (e.g. EasyOne Sky). When in need of support please contact your local distributor or visit nddmed.com to contact your regional support team.
4. **Upgrades/versioning.** As a subscriber to the nddCloud Services, you will have access, at no additional charge, to any of the following new updates of the nddCloud Services that NDD may, in its sole discretion, add to the nddCloud Services:
  - a. updates that fix known issues;
  - b. software upgrades that provide improvements to the nddCloud Services, which may include new versions of specific modules; and/or
  - c. new releases made generally available at no additional charge to other subscribers of the nddCloud Services.

For clarity, we may require additional charges for new features or modules that offer substantial new functionality.
5. **Fees and Billing.** You agree to pay all fees for the nddCloud Services based on the specific contract between yourself and ndd's sales representative or distributor.
6. **Taxes.** You agree to pay all taxes that we are required by law to collect as a result of your nddCloud Service Fees, including any applicable transaction, local, value-added, sales, or service taxes. All of our fees are exclusive of any such taxes, duties, levies or fees.
7. **Our Information Security Obligations**
  - a. We will comply with all relevant privacy and security requirements applicable to Business Associates (as defined in HIPAA) and Service Providers, including the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), the California Consumer Privacy Act (“**CCPA**”) and Massachusetts General Laws chapter 93H. In addition, we will comply with the BAA.
  - b. In accordance with the HIPAA Security Rule, we will use commercially reasonable administrative, physical and technical safeguards, including encryption, to guard against the unauthorized access, alteration, destruction or loss of demographic, insurance, medical history, diagnostic testing results, and other personal data of Patients (including name, height, ethnicity, date of birth, sex, username, and password) that has been entered, updated or modified in the nddCloud Services by a Patient or Authorized User (“**Patient Medical Information**”) and is stored by the nddCloud Services or in transit from the nddCloud Services.
  - c. We will gather, store, process and transfer other personally identifiable information that is not Patient Medical Information or PHI (such as your address, email address or phone number) in accordance with our Privacy Policy and Section 9 below.
  - d. We will store all Patient Medical Information using systems located in the United States.
  - e. We will use a current industry-standard, real-time intrusion detection system for the nddCloud Services. We will actively monitor the intrusion detection system for signatures that correspond to attempts at breaking the security of the nddCloud Services. Along with the deployment of such a system, we will adopt and follow operational procedures to disable the source of any perceived attack and escalation procedures to notify you for follow-up action.
  - f. We will perform industry-standard backup procedures.
  - g. We will use industry-standard virus, worm and virus-like damaging code (collectively “**Virus**”) prevention measures. If a Virus is found to have been introduced into the nddCloud Services or to your data, we will, at no additional charge to you, use commercially reasonable efforts to reduce the

effects of the Virus and to mitigate and restore any damage or loss to the nddCloud Services or your data, in addition to your other remedies at law or in equity. The anti-Virus solution will be configured to receive regularly scheduled updates to ensure appropriate protection of information assets.

- h. We will not allow access to any Protected Health Information, as defined under HIPAA (“PHI”), other than access by our employees and contracts that is required for the performance of the nddCloud Services.

## 8. Your Information Security Obligations.

- a. You are responsible for protecting the integrity, security and confidentiality of Patient Medical Information in the same manner as you protect all other PHI in your possession.
- b. You will use best efforts to ensure that each Authorized User will: (i) be responsible for the security and/or use of his or her user ID and password; (ii) not permit any other person or entity to use his or her user ID and password; and (iii) access and use the nddCloud Services only in accordance all applicable local, state, and federal laws and regulations. You are responsible for any breach of this Agreement by Authorized Users.

## 9. Confidentiality.

If the parties have entered into a separate agreement that includes restrictions on the use or disclosure of confidential information, such as a separate Non-Disclosure Agreement, and one of the confidentiality provisions conflicts with a confidentiality provision in this Section, then the provision that affords a greater level of protection to the protected Party will control and be enforced to the maximum extent permitted by law.

- a. As used in this Agreement, “**Confidential Information**” means (i) PHI and Patient Medical Information; (ii) this original written Agreement, any paper or electronic copies thereof, and its material terms; (iii) trade secrets, computer code, algorithms, inventions (whether or not patentable), techniques, software design and architecture, private specifications, performance information, non-public documentation, names and expertise of employees, consultants, customers and prospects; and business, financial, and product development plans and forecasts; and (iv) information that is conspicuously marked as “confidential” or “proprietary,” information disclosed verbally that is designated as “confidential” or “proprietary” at the time of disclosure, and information that, by its nature,

would reasonably be considered as confidential to any other person, firm or corporation.

- b. Confidential Information, other than PHI, does not include (i) information that is independently developed by the receiving party without the use of the disclosing party’s Confidential Information, as shown by the receiving party’s written business records; (ii) information that is known by a receiving party prior to disclosure by the disclosing party as shown by the receiving party’s written business records; (iii) information that is or becomes generally available to the receiving party or the public other than through a violation of this Agreement; or (iv) Anonymized Data (defined below).
- c. A party shall not disclose the other party’s Confidential Information except (i) on a need-to-know basis, to its agents, employees and representatives who are bound by confidentiality restrictions at least as stringent as those stated in this Agreement; or (ii) as required by law, governmental regulation or requirement, court order, or subpoena, in which case and subject to applicable law, the receiving party shall provide prompt notice to the disclosing party so that the disclosing party may seek a protective order or other appropriate remedy. A party shall not use Confidential Information of the other party except as required to perform its obligations under this Agreement.
- d. Each party shall use the same degree of care to protect the other party’s Confidential Information that it uses to protect its own highly confidential information from unauthorized disclosure, but (i) in no event shall either party use less than a commercially reasonable degree of care and (ii) nothing in this Section shall diminish a party’s other obligations under this Agreement with respect to information security.

## 10. Term.

The initial term of this Agreement (the “**Initial Term**”) will begin on, and continue for, the period set forth in the Subscription Order, unless terminated earlier by either party pursuant to this Agreement. This Agreement shall automatically renew for successive terms as defined in the Subscription Order (each a “**Renewal Term**,” and collectively, the Initial Term and all Renewal Terms are defined as the “**Term**”) unless written notice of non-renewal is received by either party at least sixty (60) days prior to the end of the then-current Term.

## 11. Termination

- a. By Client. You have the right, upon written notice to us, to terminate this Agreement at any time by written notice to us. If you have paid for your subscription, no refunds will be given.
- b. By NDD. We have the right, upon written notice to you, to terminate this Agreement if: (i) you breach any material term or condition of this Agreement, provided such breach is not cured or substantial efforts to cure are not commenced by you within thirty (30) calendar days following NDD's written notice to you of such breach, provided that we must provide you with an additional 10-day written warning and final opportunity to cure before we may terminate the Agreement; (ii) at the end of the Initial Term or any Renewal Term, in accordance with Section 10 ("Term"); or (iii) NDD determines to cease providing the nddCloud Services, provided that NDD provides ninety (90) calendar days prior written notice to Client.

## 12. Effect of Termination. Upon the termination of this Agreement:

- a. Your access to the nddCloud Services will terminate.
- b. Unless otherwise authorized, you will promptly return or certify in writing the destruction of NDD's Confidential Information not more than thirty (30) days following the effective date of termination or expiration of this Agreement. Unless otherwise authorized, NDD will promptly return, or make available for you to download, your Confidential Information, including any electronic files stored in the nddCloud Services, not more than thirty (30) days following the effective date of termination or expiration of this Agreement. NDD will not delete or destroy your Confidential Information before the earlier of (i) your written permission or instruction to delete it or (ii) 120 days after the effective date of termination or expiration of this Agreement; however, NDD shall not be required to destroy Confidential Information or data that is archived as part of its standard backup procedures until such backup data is destroyed in the ordinary course of business.
- c. NDD will extend the same security and protections as it was required to provide during the Term of this Agreement to any retained Confidential Information for so long as it retains such Confidential Information.

- d. Each party will continue to comply with its confidentiality obligations under this Agreement.

## 13. Suspension. We may immediately suspend or block all or part of the nddCloud Services by sending you a written notice of suspension if we have the right to terminate this Agreement, in lieu of termination or prior to termination. Notwithstanding the foregoing, we will endeavor in good faith to provide you with advance notice of any suspension in accordance with the notice provisions below, and we will provide you with notice of the suspension or termination as soon as it becomes practicable for us to do so.

## 14. Our Representations and Warranties. We represent and warrant the following:

- a. The nddCloud Services will substantially conform to the documentation provided or made available to you by us.
- b. We will devote commercially reasonable efforts to perform the nddCloud Services promptly, diligently and commensurate with relevant professional standards.
- c. Your use of the nddCloud Services as permitted under this Agreement does not and will not infringe any third party's rights.

## 15. Your Representations and Warranties. You represent and warrant the following:

- a. Your performance of this Agreement does not conflict with any obligations or duties, express or implied, that you may have to third parties.
- b. You have obtained all consents from Patients (or their legal representatives or guardians) required by applicable law (including HIPAA) for the collection, storage, processing and exchange of their Patient Medical Information and PHI as contemplated by this Agreement (including the BAA).

## 16. Your General Restrictions and Responsibilities.

- a. You are responsible for the accuracy and completeness of Patient Medical Information (excluding clinical data we obtain from equipment that we provide to you or Patients) and for verifying such Patient Medical Information with Patients. **You shall neither rely on, nor make medical decisions on, Patient Medical Information until you have verified the accuracy and completeness of the Patient Medical Information and obtained all necessary and appropriate supplemental information. You are solely responsible for**

**verifying the accuracy of and interpreting the Patient Medical Information, for making any medical decisions based on the Patient Medical Information, and for making or suggesting any course of medical treatment on the basis of the Patient Medical Information.**

- b. You are responsible for obtaining all consents from Patients (or their legal representatives or guardians) required by applicable law (including HIPAA) for the collection, storage, processing and exchange of their Patient Medical Information and PHI as contemplated by this Agreement (including the BAA).
- c. Your use of the nddCloud Services will comply with all applicable laws, rules and regulations.
- d. Your Authorized Users will be limited to your employees, independent contractors (including their subcontractors), and affiliated physicians and other healthcare providers.
- e. You are responsible for all software and connections to the Internet required to gain access to the nddCloud Services (excluding equipment that we provide to you or Patients).
- f. Except as otherwise expressly provided in this Agreement, you will not, and will not permit any Authorized User to: (i) provide, disclose, divulge or make available to or permit use of the nddCloud Services by any third party (other than Authorized Users and Patients); (ii) copy or reproduce all or any part of the nddCloud Services (except as expressly provided for herein); (iii) interfere, or attempt to interfere, with the nddCloud Services in any way; (iv) distribute, market, resell, lease, transfer, license or sublicense the nddCloud Services; (v) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the software that operates the nddCloud Services, or discover or attempt to discover the source code of any portion of such software in any way for any reason; (vi) engage in spamming, spoofing or any other fraudulent, illegal or unauthorized use of the nddCloud Services; (vii) introduce into or transmit through the nddCloud Services any Virus; (viii) create any frames at any other web sites pertaining to or using any of the information provided by the nddCloud Services; or (ix) engage in or allow any action involving the nddCloud Services that is inconsistent with the terms and conditions of this Agreement.

## 17. Disclaimers

- a. EXCEPT AS PROVIDED IN THE SECTIONS ENTITLED "OUR REPRESENTATIONS AND WARRANTIES" AND "OUR INFORMATION

SECURITY OBLIGATIONS," ALL GOODS AND SERVICES ARE PROVIDED "AS-IS," AND NDD AND ITS AFFILIATES, SUBCONTRACTORS AND THIRD-PARTY LICENSORS, IF ANY, MAKE NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY REGARDING OR RELATING TO SERVICES PROVIDED TO CLIENT UNDER THIS AGREEMENT. **NDD IS NOT A HEALTH SERVICES PROVIDER AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO CLIENT, AUTHORIZED USERS OR PATIENTS OR OTHER USERS OF THE SERVICES REGARDING THE COMPLETENESS OR ACCURACY OF THE PATIENT MEDICAL INFORMATION AS ENTERED BY PATIENTS OR AUTHORIZED USERS, NOR ANY DIAGNOSIS, INTERPRETATION, MEDICAL DECISION OR COURSE OF MEDICAL TREATMENT RELATED THERETO.**

- b. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR REQUIRED BY LAW, WE AND OUR SERVICE SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. YOU ARE SOLELY RESPONSIBLE FOR THE SUITABILITY OF ALL GOODS AND SERVICES CHOSEN AND FOR DETERMINING WHETHER THEY MEET YOUR CAPACITY, PERFORMANCE AND SCALABILITY NEEDS.
- c. WE AND OUR SERVICE SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE NDDCLOUD SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, COMPLETELY SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT WE DO NOT CONTROL OR MONITOR THE TRANSFER OF DATA OVER THE INTERNET, AND THAT INTERNET ACCESSIBILITY CARRIES WITH IT THE RISK THAT YOUR PRIVACY, DATA, CONFIDENTIAL INFORMATION OR PROPERTY MAY BE LOST OR COMPROMISED.
- d. NDD DOES NOT WARRANT TO CLIENT THE AVAILABILITY OF THE SERVICES AT ALL TIMES AND SPECIFICALLY



EXCLUDES AVAILABILITY DURING SCHEDULED DOWNTIME FOR MAINTENANCE PURPOSES, UNSCHEDULED MAINTENANCE AND SYSTEM OUTAGES, AND/OR AVAILABILITY OF THE SERVICES FOR REASONS BEYOND NDD'S CONTROL.

- e. NO SUPPORT, ADVICE OR INFORMATION RELATING TO THE NDDCLOUD SERVICES THAT YOU OBTAIN FROM NDD OR FROM ANY THIRD PARTY, OR THAT YOU OBTAIN THROUGH THE NDDCLOUD SERVICES, WILL CREATE ANY WARRANTY THAT IS NOT EXPRESSLY WRITTEN IN THIS AGREEMENT.

## 18. Limitation of Damages

- a. NEITHER WE NOR ANY OF OUR EMPLOYEES, AGENTS, REPRESENTATIVES, SERVICE SUPPLIERS, OR LICENSORS WILL BE LIABLE FOR ANY PUNITIVE, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES, OR FOR ANY LOST PROFITS, LOST DATA, LOST BUSINESS, LOST REVENUES, DAMAGE TO GOODWILL, LOST OPPORTUNITIES OR LOSS OF ANTICIPATED SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY OF SAME, AND REGARDLESS OF WHETHER THE CLAIMS ARE BASED IN CONTRACT, TORT, STRICT LIABILITY, INFRINGEMENT, OR ANY OTHER LEGAL OR EQUITABLE THEORY.
- b. EXCLUDING ITS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, EACH PARTY'S AGGREGATE LIABILITY AND THE AGGREGATE LIABILITY OF ITS EMPLOYEES, AGENTS AND REPRESENTATIVES TO THE OTHER PARTY UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE TO US FOR THE NDDCLOUD SERVICES DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE FIRST EVENT GIVING RISE TO THE CLAIM(S) OCCURRED.

## 19. Intellectual Property

- a. All materials, including without limitation, the nddCloud Services, web pages, web-based applications, mobile and tablet-based applications, Internet domain names, data, or information developed or provided by NDD

under this Agreement or other agreements between NDD and Client, and any ideas, know-how, methodologies or processes conceived, developed or used to provide the nddCloud Services or other deliverables or services under this Agreement between NDD and Client, including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights related to such materials, shall be and remain the sole and exclusive property of NDD. You may only use that software in connection with the nddCloud Services as permitted under this Agreement.

- b. Each Patient owns and retains all right, title and interest in and to his or her Patient Medical Information created using the nddCloud Services. Client has the right to download in electronic form and retain a copy of the Patient Medical Information.
- c. We will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use and incorporate into the nddCloud Services any suggestions, enhancement requests, recommendations or other feedback provided by you or your Authorized Users, relating to the nddCloud Services.
- d. We may use PHI and Patient Medical Information to create anonymized data sets that have irreversibly removed the link between the individual and his or her medical information, in compliance with the de-identification requirements of HIPAA and its associated regulations ("**De-Identified Data**"). We may use De-Identified Data to generate reports on medical trends and issues, to aid medical researchers, to maintain and enhance our nddCloud Service, to generate artificial intelligence learning tools, and for other purposes not prohibited by HIPAA, HITECH, the CCPA, other applicable law, the BAA or our Privacy Policy.

## 20. Indemnification

- a. We agree to indemnify, defend and hold you and your employees, agents, shareholders, officers, directors, successors and assigns harmless from and against any and all claims, damages, liabilities, costs, settlements, penalties and expenses (including attorneys' fees, expert's fees and settlement costs) arising out of or relating to any suit, action, proceeding, arbitration, subpoena, claim or demand brought or asserted by a third party pursuant to any theory of liability arising out of or relating to: (i) any material breach by NDD of the BAA; (ii) the alleged or actual infringement or misappropriation of any intellectual property right or other proprietary right by NDD; or (iii) NDD's failure to use

reasonable security precautions. You will provide NDD with written notice of the existence of any basis for indemnification. If an intellectual property infringement claim is made, NDD will, at its sole option and expense: (X) procure for Client the right to continue to use the allegedly infringing intellectual property through the nddCloud Services or (Y) modify, amend or replace the allegedly infringing intellectual property so that the nddCloud Services are non-infringing. If NDD determines that neither of these options is commercially reasonable, then NDD may terminate this Agreement and no further payment obligations shall be due from the Client therefor. THIS SECTION SETS FORTH NDD'S ENTIRE OBLIGATION AND LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY WITH REGARD TO CLAIMS OF INFRINGEMENT.

- b. **You agree that NDD does not have any responsibility for the conduct of your business or medical practice, including the medical treatment or care of your Patients. You agree that any reliance upon the nddCloud Services shall not diminish your responsibility for exercising proper medical treatment and patient care.** You agree to indemnify, defend and hold NDD and its employees, agents, shareholders, officers, directors, successors and assigns harmless from and against any and all claims, damages, liabilities, costs, settlements, penalties and expenses (including attorneys' fees, expert's fees and settlement costs) arising out of or relating to any suit, action, proceeding, arbitration, subpoena, claim or demand brought or asserted by a third party pursuant to any theory of liability arising out of or relating to: (i) any injury resulting from your use of Patient Medical Information; (ii) any claim that the Patient Medical Information is inaccurate or incomplete; (iii) any non-compliance with Section 16 ("YOUR GENERAL RESTRICTIONS AND RESPONSIBILITIES"); (iv) claims that content or information provided by an Authorized User or a Patient infringes the privacy or intellectual property rights of a third party; (v) any breach by you of this Agreement; or (vi) your failure to use reasonable security precautions. We will provide you with written notice of the existence of any basis for indemnification. NDD will have the right to approve any settlement but may not unreasonably withhold approval.

**21. Relationship of the Parties.** NDD and Client are each independent parties. This Agreement and any transaction under it does not create any agency, joint venture, or partnership between us and you.

**22. Amendment.** We may amend the or Privacy Policy by posting the modified version online at [\[PRIVACY POLICY LINK\]](#) (or any successor or alternative sites we may inform you of or you may be aware of) or emailing you a copy of the amendment document. Other than as set forth in the previous sentence, no other amendment to this Agreement will be effective unless it is in writing and signed by both parties. No waiver of any provision of this Agreement will be effective unless in writing and signed by the waiving party, and no delay or failure to exercise or enforce any right or remedy hereunder will constitute a waiver of that right or remedy. Express waiver of any right or remedy in a particular instance will not constitute a waiver of that right or remedy in any other instance, or a waiver of any other right or remedy.

**23. Notices.** Any written notice required or permitted to be delivered pursuant to this Agreement will be in writing and will be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via e-mail with a confirmation copy sent via overnight mail; and (d) one (1) business day after deposit with a national overnight courier, in each case to the respective addresses listed on the signature page of this Agreement.

**24. Public Announcements.** Client grants NDD the right to use Client's name, logo, trademarks and/or trade names in NDD brochures, presentations and financial reports indicating that Client is a client of NDD. NDD grants Client the right to use NDD's name, logo, trademarks and/or trade names in Client brochures, presentations and financial reports indicating that NDD is a vendor of Client. All other public statements or releases shall require the mutual consent of the parties.

**25. Assignment; Resale; Binding Effect.** Neither party may assign this Agreement without the other party's prior written consent; provided, however, that a party shall have the right to assign this Agreement to an affiliate or a third party in connection with a merger, sale of a controlling equity interest or sale of substantially all its assets or other transfer or disposition of its business operations. This Agreement will be binding upon and inure to the benefit of all of our and your successors and assigns.

**26. Subcontracting.** We may subcontract any portion of the nddCloud Services to a third-party contractor, provided that we will remain fully responsible to you for the nddCloud Services pursuant to this Agreement and for our compliance with the BAA. We may collect

and report information regarding your use of the nddCloud Services to our subcontractors as required to provide you with the nddCloud Services.

**27. Governing Law; Venue; Jurisdiction; Waiver of Jury Trial.** The laws of the Commonwealth of Massachusetts, without reference to its choice of law principles, govern this Agreement and any claims arising out of or relating to this Agreement or our relationship. All disputes and controversies arising out of or relating to this Agreement or our relationship must be resolved in the state or federal courts in the county and state in which your headquarters are located, if within the United States, or otherwise in the state or federal courts in the Commonwealth of Massachusetts, and each of us irrevocably consents to the exclusive venue and personal jurisdiction of those courts for the resolution of such disputes and waives all objections thereto. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PARTIES' RELATIONSHIP.

**28. Force Majeure.** Except with regard to your payment obligations, neither party shall have any liability to the other party or to third parties for any failure or delay in performing any obligation under this Agreement due to circumstances beyond its reasonable control including, without limitation, interruptions of the nddCloud Services due to Internet-related and/or communications service degradation, problems or interruptions, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism.

**29. Miscellaneous.** The headings in this Agreement are solely for convenience of reference and will not affect its interpretation. This Agreement does not create any third-party beneficiary rights. If any term, provision, covenant, or condition of this Agreement is held invalid or unenforceable in a valid legal proceeding, that term or provision may be modified only to the extent necessary for enforcement, that term or provision will be enforced to the maximum extent permitted by law, and the rest of this Agreement will remain in full force and effect and will in no way be affected or invalidated. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original, and such counterparts together will constitute one and the same agreement.

**30. Entire Agreement.** This Agreement constitutes the final and entire agreement between the parties

regarding its subject matter, and it supersedes all other oral or written agreements or policies relating thereto. If there is a conflict between or among any of the parts of this Agreement, they will govern in the following order: an addendum or amendment signed by both parties, the Agreement, and the Privacy Policy. Additional or different terms in any written communication from you, including any purchase order or request for nddCloud Services, are void.

**31. Survival.** All terms of this Agreement that should by their nature survive termination will survive, including, Sections 5-9, 12, 16-20, 23, 25, 27, 29-31