GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SERVICE
AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE LIST

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage®, a menu-driven database system. The INTERNET address GSA Advantage!® is:
GSAAdvantage.gov.

**Multiple Award Schedule (MAS)**

<table>
<thead>
<tr>
<th>FSC Group</th>
<th>FSC Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT AND TELECOM—NETWORK AS A SERVICE</td>
<td>DG10</td>
</tr>
<tr>
<td>IT AND TELECOM—COMPUTE: SERVERS (HARDWARE AND PERPETUAL LICENSE SOFTWARE)</td>
<td>7B22</td>
</tr>
</tbody>
</table>

**CONTRACT NUMBER:**
47QTCA22D0072

For more information on ordering from Federal Supply Schedules go to the GSASchedules page at GSA.gov.

**PERIOD COVERED BY CONTRACT:** **April 19, 2022 – April 18, 2027**

![Esyda logo](esvyda.png)

**Esyda Inc.**  
293 Esther Ave  
Campbell, CA 95008-1202  
Phone: (408) 829-0985  
www.esvyda.com

Contractor’s Administration Source: elozano@esvyda.net

**Business Size:** Small Business  
**DUNS:** 078398548  
**UEI:** MAFUFKWJN8B4
# Table Contents

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</tbody>
</table>
CUSTOMER INFORMATION

1a. TABLE OF AWARDED SPECIAL ITEM NUMBERS (SINs):

<table>
<thead>
<tr>
<th>SIN</th>
<th>Description</th>
<th>SIN Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>54151ECOM</td>
<td>Includes value added network services, e-mail services, Internet access services, electronic subscription services, data transmission services, and emerging electronic commerce technologies.</td>
<td>Electronic Commerce and Subscription Services</td>
</tr>
<tr>
<td>33411</td>
<td>Includes desktop, laptop, tablet computers (including rugged), servers, storage equipment, hyperconverged integrated systems, supercomputers, routers, switches and other communications equipment, IT security equipment (hardware based firewalls), audio and video (AV) equipment, public address systems, monitors/displays, sensors and other Internet of Things (IOT) devices, printers and Multi-Function Device (MFD) equipment, broadcast band radio, two-way radio (LMR), microwave radio equipment, satellite communications equipment, radio transmitters/receivers (airborne), radio navigation equipment/antennas, optical/imaging systems, and associated peripherals required for operations (such as controllers, connectors, cables, drivers, adapters, etc., ancillary installation of any equipment purchased.</td>
<td>Purchasing of new electronic equipment</td>
</tr>
</tbody>
</table>

2. MAXIMUM ORDER:

<table>
<thead>
<tr>
<th>SIN</th>
<th>Maximum Order Limitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>54151ECOM</td>
<td>$ 500,000.00</td>
</tr>
<tr>
<td>33411</td>
<td>$ 500,000.00</td>
</tr>
</tbody>
</table>

3. MINIMUM ORDER: $100.00

4. GEOGRAPHIC COVERAGE: Domestic Delivery

5. POINT(S) OF PRODUCTION:
   - 293 Esther Ave Campbell, CA 95008-1202 - USA

6. DISCOUNT FROM LIST PRICES: Prices are NET

7. QUANTITY Discount(S): 1% for task orders at or above $50,000

8. PROMPT PAYMENT TERMS: 1% 7 days, NET 30
9. **GOVERNMENT PURCHASE CARDS**
   - Accepted at or below the micro-purchase threshold
   - Accepted above the micro-purchase threshold.

10. **FOREIGN ITEMS** (list items by country of origin). [See page 11](#)

11a. **TIME OF DELIVERY**: To be negotiated between Contractor and Ordering Activity

11b. **EXPEDITED DELIVERY**: To be negotiated at the task order level

11c. **OVERNIGHT AND 2-DAY DELIVERY**: To be negotiated at the task order level

11d. **URGENT REQUIREMENTS**: Customers are encouraged to contact the contractor for the purpose of requesting accelerated delivery

12. **FOB POINT**: Destination; 48 contiguous states and Washington, DC

<table>
<thead>
<tr>
<th>SIN</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>54151ECOM</td>
<td>V - 48 States,DC</td>
</tr>
<tr>
<td>33411</td>
<td>V - 48 States,DC</td>
</tr>
</tbody>
</table>
13a. **ORDERING ADDRESS:**
   - 293 Esther Ave Campbell, CA 95008-1202 - USA

13b. **ORDERING PROCEDURES:** For supplies and services, the ordering procedures and establishing Blanket Purchase Agreements (BPAs) are found in FAR 8.405-2.

14. **PAYMENT ADDRESS:**
   - 293 Esther Ave Campbell, CA 95008-1202 - USA

15. **WARRANTY PROVISION:** N/A

16. **EXPORT PACKING CHARGES:** N/A

17. **TERMS AND CONDITIONS OF GOVERNMENT PURCHASE CARD ACCEPTANCE:** See 9. above

18. **TERMS AND CONDITIONS OF RENTAL, MAINTENANCE, AND REPAIR (IF APPLICABLE):** N/A

19. **TERMS AND CONDITIONS OF INSTALLATION (IF APPLICABLE):** N/A

20. **TERMS AND CONDITIONS OF REPAIR PARTS INDICATING DATE OF PARTS PRICE LISTS AND ANY DISCOUNTS FROM LIST PRICES (IF AVAILABLE):** N/A

20a. **TERMS AND CONDITIONS FOR ANY OTHER SERVICES (IF APPLICABLE):** N/A

21. **LIST OF SERVICE AND DISTRIBUTION POINTS (IF APPLICABLE):** N/A

22. **LIST OF PARTICIPATING DEALERS (IF APPLICABLE):** NONE

23. **PREVENTIVE MAINTENANCE (IF APPLICABLE):** N/A

24a. **SPECIAL ATTRIBUTES SUCH AS ENVIRONMENTAL ATTRIBUTES (e.g. recycled content, energy efficiency, and/or reduced pollutants):** N/A

24b. **Section 508 Compliance for EIT:** If applicable, Section 508 compliance information on the supplies and services offered in this contract will be supplied by the Contractor or Manufacturer upon request via email at the following address info@esvyda.com

25. **DUNS NUMBER:** 078398548   **UEI:** MAFUFKWJN8B4

26. **CAGE #:** 6NW23

27. **NOTIFICATION REGARDING REGISTRATION IN SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE:**
   Contractor is registered and active in SAM
AWARDED PRICES

<table>
<thead>
<tr>
<th>Product Name</th>
<th>Price Offered to GSA (Including IFF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telehealth Cellular Gateway 4G - GW9014</td>
<td>$146.60</td>
</tr>
<tr>
<td>FORA Monthly SIM</td>
<td>$7.82</td>
</tr>
<tr>
<td>Remote Patient Monitoring (RPM) Service with premium features x patient</td>
<td>$11.92</td>
</tr>
<tr>
<td>Remote Patient Monitoring (RPM) Service for single vital sign x patient</td>
<td>$2.92</td>
</tr>
<tr>
<td>Telehealth Service for providers with scheduling</td>
<td>$55.71</td>
</tr>
<tr>
<td>Telehealth Service for providers with Quick Link</td>
<td>$34.21</td>
</tr>
<tr>
<td>Telehealth System setup for provider</td>
<td>$136.83</td>
</tr>
<tr>
<td>Transitional Care Management Technology services</td>
<td>$5.86</td>
</tr>
</tbody>
</table>

Description of Products

<table>
<thead>
<tr>
<th>Manufacturer Name</th>
<th>MFR Part No (If Applicable)</th>
<th>Dealer Part No (If Applicable)</th>
<th>UPC-A</th>
<th>Product Name</th>
<th>Product Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ForaCare, Inc</td>
<td>800-9017700-001</td>
<td>800-9017700-001</td>
<td>NA</td>
<td>Telehealth Cellular Gateway 4G - GW9014</td>
<td>It is a device that collects biometric data wirelessly from compatible ForaCare devices with Bluetooth and then it is able to transmit the data collected by using SIMcard or ethernet connectivity to the Esvyda Software (ES-RPM-FULL-PT) or (ES-RPM-SINGLE-PT). UOI: EACH</td>
</tr>
<tr>
<td>ForaCare, Inc</td>
<td>FORA Monthly SIM</td>
<td>FORA Monthly SIM</td>
<td>NA</td>
<td>FORA Monthly SIM</td>
<td>Enterprise Connectivity: Monthly SIM fee, Server Pass Through, Licensing, Support; (Per month). It is used in the Telehealth Cellular Gateway 4G – GW9014 to allow the transmission of biometric data between Fora Care and Esvyda. Service Subscription: Per device / each month</td>
</tr>
</tbody>
</table>
| ESVYDA! INC       | ES-RPM-FULL-PT              | ES-RPM-FULL-PT                | NA    | Remote Patient Monitoring (RPM) Service with premium features x patient | It is a software as a service (SaaS) that allows to the clinical staff to collect and analyze multiple vital signs data generated by patients using an integrated mobile app (Android/iOS) or other sources such as manual entries, IOT devices (enabled with cellular connectivity) or historical data with the options to create population groups to setup vital sign normal-ranges for...
triggering medical alerts based on thresholds, create care plans based on goals and activities by health conditions which enable the growth of patient engagement towards the treatment, interactive communication tools (video, voice, chat, and secure messages) between patients and clinical staff. In addition, the system tracks the clinical staff activities inside the platform to provide insights about the performance and some KPIs (Keep Performance Indicators) such as interaction time per patient per month, patient risk, and patient's adherence.

This SaaS includes:

- Option to collect all the following vital signs (Weight, Glucose, Blood Pressure, Temperature, Steps, Heart Rate, and Blood Oxygen Saturation)
- Care Plan and Compliance module
- Interactive Communication Module: Secure Messaging, Video, Voice, Chat, and Notification system via email, SMS, or Mobile Push Notifications.
- HIPAA compliance
- Interoperability with EHR (Electronic Health Records) platforms such as Athenahealth
- Patient and Clinical Staff Web Portal
- Patient Mobile App (Android and iOS)
- Report System for (e.g., vital trends, interactive communication compliance, care plan compliance, population groups, tasks, and alerts status).

Service Subscription: Per user/ Per month

It is a software as a service that allows to the clinical staff to collect
<table>
<thead>
<tr>
<th>ESVYDA! INC</th>
<th>ES-RPM-SINGLE-PT</th>
<th>ES-RPM-SINGLE-PT</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Remote Patient Monitoring (RPM) Service for single vital sign x patient</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Remote Patient Monitoring (RPM) Service for single vital sign x patient and analyze only 1 (one) vital sign data generated by patients using an integrated mobile app (Android/iOS) or other sources such as manual entries, IOT devices (enabled with cellular connectivity) or historical data with the options to create population groups to setup vital sign normal-ranges for triggering medical alerts based on thresholds, create care plans based on goals and activities by health conditions which enable the growth of patient engagement towards the treatment, interactive communication tools (video, voice, chat, and secure messages) between patients and clinical staff. In addition, the system tracks the clinical staff activities inside the platform to provide insights about the performance and some KPIs (Keep Performance Indicators) such as interaction time per patient per month, patient risk, and patient’s adherence.

This SaaS includes:

- Option to collect only 1 (one) of the following vital signs (Weight, Glucose, Blood Pressure, Temperature, Steps, Heart Rate, and Blood Oxygen Saturation)
- Care Plan and Compliance module
- Interactive Communication Module: Secure Messaging, Video,
- Voice, Chat, and Notification system via email, SMS, or Mobile Push Notifications.
- HIPAA compliance
- Interoperability with EHR (Electronic Health Records) platforms such as Athenahealth
- Patient and Clinical Staff Web Portal
- Patient Mobile App (Android and iOS)
- Report System for (e.g., vital trends, interactive
<table>
<thead>
<tr>
<th>ESVYA! INC</th>
<th>ES-TELEHEALTH-PR</th>
<th>ES-TELEHEALTH-PR</th>
<th>NA</th>
<th>Telehealth Service for providers with scheduling</th>
</tr>
</thead>
<tbody>
<tr>
<td>ESVYA! INC</td>
<td>ES-TELEHEALTH-PR</td>
<td>ES-TELEHEALTH-PR</td>
<td>NA</td>
<td>Telehealth Service for providers with Quick Link</td>
</tr>
</tbody>
</table>

**Service Subscription:** Per user/ Per month

- Communication compliance, care plan compliance, population groups, tasks, and alerts status.

**Service Subscription:** Per physician/ Per month

- It is a software as service (SaaS) that provides interactive communication tools such as video/voice platform, chat, secure messaging, SMS, and emails so users can render telehealth services with an advance scheduling system. This SaaS includes:
  - Scheduling engine that allows both clinical staff and patients to book virtual appointments.
  - Customization of virtual visit workflows (pre-visit activities, surveys, online payments, virtual check-ins, waiting room, and simple SOAP notes.
  - Reminder system for booked appointments based on no-show risk factors.
  - Mobile application for patients (Android and iOS): self-booking, video encounters, payment collection, reminders.
  - Interoperability with EHR (Electronic Health Records) platforms such as Athenahealth.

**Service Subscription:** Per user/ Per month

- It is a software as service (SaaS) that provides interactive communication tools such as video/voice platform, chat, secure messaging, SMS, and email so users can render telehealth services with an optional simple scheduling system. This SaaS includes:
### Call Features
- Minutes and sessions (Unlimited)
- Personalized room URL
- IOS, Android and Laptops support using the Web Browser (app installation not required)
- Standard and High-Quality Video
- Photo capture of High-Quality Video
- Option to remove patients into waiting room.
- Option to remove patients from queue.

### Workflow Features
- Waiting Room customization
- Patient Queue
- Meeting Statistics
- Room passcode
- Text & email invitations
- Multiple waiting rooms per clinic.
- Custom terms and conditions.
- Interoperability with EHR (Electronic Health Records) platforms such as AthenaHealth for scheduling system integration.

- Security
- HIPAA Compliant
- Signed BAA
- End-to-end encryption

Service Subscription: Per physician/Per month

<table>
<thead>
<tr>
<th>ESVYDA! INC</th>
<th>ES-TELEHEALTH-SETUP-PR</th>
<th>ES-TELEHEALTH-SETUP-PR</th>
<th>NA</th>
<th>Telehealth System setup for provider</th>
</tr>
</thead>
</table>

This is a training service carried out by an Esvyda agent in which the user is explained the operation of the different modules of the telemedicine system and at the same time an accompaniment is made to configure the scheduling system, the fee-schedules of the different types of telemedicine appointments, the reminder system, the virtual waiting rooms, the payment collection system. The training duration includes up to 5
(five) hours per user.
Service: One time / per user

<table>
<thead>
<tr>
<th>ESVYDA! INC</th>
<th>ES-CCM-PT</th>
<th>ES-CCM-PT</th>
<th>NA</th>
<th>Chronic Care Management Technology services</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is a software as a service (SaaS) that allows users to create care plans based on patient's health conditions. The system tracks patient's vital sign readings and prescriptions which allows physicians to monitor progress based on the care plan prescribed and meet the criteria required by the CTP codes 99487, 99490, 99491, 99487, 99489.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Subscription: Per patient/ Per month</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ESVYDA! INC</th>
<th>ES-TCM-PT</th>
<th>ES-TCM-PT</th>
<th>NA</th>
<th>Transitional Care Management Technology services</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is a software as a service (SaaS) that allows users to create care plans after a hospitalization or other inpatient facility stay. The system tracks patient's vital sign readings and prescriptions which allows physicians to monitor progress based on the date the patient is discharged from the inpatient facility up to 7 days for the CPT codes 99496 or 14 days for the CPT code 99495.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Service: Per user/ Per event</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Country of Origin

<table>
<thead>
<tr>
<th>Country of Origin</th>
<th>Vendor Name</th>
<th>Product Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>TW</td>
<td>ForaCare, Inc</td>
<td>Telehealth Cellular Gateway 4G - GW9014</td>
</tr>
<tr>
<td>US</td>
<td>ForaCare, Inc</td>
<td>FORA Monthly SIM</td>
</tr>
<tr>
<td>US</td>
<td>ESVYDA! INC</td>
<td>Remote Patient Monitoring (RPM)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Service with premium features x patient</td>
</tr>
<tr>
<td>US</td>
<td>ESVYDA! INC</td>
<td>Remote Patient Monitoring (RPM)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Service for single vital sign x patient</td>
</tr>
<tr>
<td>US</td>
<td>ESVYDA! INC</td>
<td>Telehealth Service for providers with scheduling</td>
</tr>
<tr>
<td>US</td>
<td>ESVYDA! INC</td>
<td>Telehealth Service for providers with Quick Link</td>
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<td>ESVYDA! INC</td>
<td>Chronic Care Management Technology services</td>
</tr>
<tr>
<td>US</td>
<td>ESVYDA! INC</td>
<td>Transitional Care Management Technology services</td>
</tr>
</tbody>
</table>
ESVYDA! INC. EULA SOFTWARE-AS-A-SERVICE (SaaS) TERMS OF USE

PLEASE READ CAREFULLY: IF YOU ARE ACCEPTING THIS SOFTWARE-AS-A-SERVICE TERMS OF USE ("AGREEMENT") ON BEHALF OF THE ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER ("CUSTOMER"), YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THE CUSTOMER TO THIS AGREEMENT. UNLESS THE CUSTOMER HAS ANOTHER VALID AGREEMENT FOR THE PURCHASE AND USE OF ESVYDA! INC. ("ESVYDA! INC.") PRODUCTS (AS DEFINED BELOW), THIS AGREEMENT GOVERNS YOUR RIGHTS TO THE ESVYDA! INC. PRODUCTS. BY EXECUTING A WRITTEN ORDER FOR ESVYDA! PRODUCTS THE CUSTOMER ACCEPTS THIS AGREEMENT AND THE AGREEMENT WILL BE DEEMED A BINDING CONTRACT BETWEEN ESVYDA! INC. AND CUSTOMER. IF CUSTOMER DOES NOT AGREE TO OR CANNOT COMPLY WITH ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT OR IF YOU DO NOT HAVE AUTHORITY TO BIND THE CUSTOMER, THEN DO NOT CLICK “ACCEPT” AND CUSTOMER WILL NOT BE AUTHORIZED TO USE THE PRODUCTS.

This Agreement is entered into as of the earliest of the date that Customer accepts the terms and conditions herein, the date set forth on an Order, or the date on which Customer downloads, installs, activates, or uses the Software.

1. Definitions.


b. “Affiliate” means any entity controlling, controlled by or under common control with Customer, where “control” means (i) a general partnership interest in a partnership; or (ii) the beneficial ownership of a majority of the outstanding equity entitled to vote for directors.

c. “Documentation” means the written and/or electronic release notes, implementation guides, or other published technical documentation about the applicable SaaS Product that is provided by ESVYDA! INC. to Customer together with access to the SaaS Product.

d. “License Term” means the term of the access rights granted for the SaaS Product, as identified in the relevant Order, starting when ESVYDA! INC. delivers to Customer the relevant credentials to access and use the SaaS Product.

e. “Order” means any purchase order, product schedule or ordering document between Customer and authorized reseller or between Customer and ESVYDA! INC. (if purchasing directly) that identifies the products and/or services licensed or sold and any applicable licensing parameters (e.g., the number of licenses).

f. “SaaS Product” means the mobile enterprise management services made available by access to and use of software hosted by ESVYDA! INC. to which Customer has purchased a license under the relevant Order. References in this Agreement to the SaaS Product shall include the Software.
g. “Software” means the object code version of ESVYDA! INC. proprietary computer programs made available by ESVYDA! INC. for download by Customer for use in connection with any SaaS Product, including any Documentation and Updates.

h. “Updates” means any correction, update, upgrade, patch, or other modification or addition made by ESVYDA! INC. to specific Software.

2. Rights of Access and Use.

a. Access and Use. Subject to the terms and conditions of this Agreement, during the applicable License Term, ESVYDA! INC. hereby grants to Customer (i) a non-exclusive, non-transferable, and non-sub- licensable license for Customer to access and use the SaaS Product and to copy, and install the Software, in each case, solely for Customer’s internal use with Customer’s ordinary business operations and in accordance with the applicable Documentation, and (ii) the right to maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes. Customer may provide access to the SaaS Product to its and its Affiliates’ employees, contractors, and other individual users to access and use the SaaS Products on its behalf and for its internal business purposes in compliance with this Agreement, provided Customer is responsible for all such users’ actions that violate the terms of this Agreement, any breach by any such user is a breach by Customer, and no such user is an employee or contractor of a ESVYDA! INC. Competitor (defined below). Customer agrees that its purchase of the Software is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by ESVYDA! INC. with respect to future functionality or features.

b. Trial License. This Agreement applies to trial copies of the SaaS Product (“Trial Product”), except for the following different or additional terms: (i) the License Term for Trial Product is thirty (30) days, which ESVYDA! INC. may extend upon written consent; (ii) the trial period shall commence on the date that ESVYDA! INC. first provides Customer credentials to access the Trial Product; (iii) Trial Product is provided “AS IS” without warranty of any kind, and ESVYDA! INC. disclaims all warranties, indemnities, and all other liabilities for Trial Product; (iv) Customer is not entitled to any support and maintenance services or any Updates for Trial Product; and (v) either party may terminate the license for Trial Product upon five (5) days’ written notice to the other party.

3. Use Restrictions; Customer Obligations. As a condition of the license granted in Section 2, Customer shall not itself and shall not authorize or permit any third party to: (a) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the SaaS Product (except and only to the extent any foregoing restriction is prohibited by applicable law); (b) modify, adapt, or create any derivative works based on the SaaS Product; (c) distribute, sell, license, lease, transfer, or otherwise provide any SaaS Product to third parties except as expressly provided in this Agreement; (d) provide the SaaS Product as a service to unaffiliated third parties, including but not limited to on a service bureau, SaaS, or time-sharing basis; (e) unbundle any component of any SaaS Product; or (f) use the Documentation except for supporting Customer’s authorized use of the SaaS Product; or (g) violate the Acceptable Use Policy; or (h) employ or authorize a ESVYDA! INC. Competitor to use or view the SaaS Product or Documentation, or to provide management, hosting, support or similar services with regard to the SaaS Product without the prior written consent of ESVYDA! INC. “ESVYDA! INC. Competitor” means the successor divisions/subsidiaries that include products providing similar features and technologies.
Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of any SaaS Product and notify ESVYDA! INC. promptly of any such unauthorized access or use.

4. Payment; Additional Licenses; Reporting. Customer shall pay the fees for ESVYDA! INC. products and/or services as set forth in the applicable Order. If Customer is purchasing through a reseller, payment terms will be determined by Customer and the reseller. If Customer is purchasing directly from ESVYDA! INC., all fees shall be paid in U.S. dollars and are due within thirty (30) days of the invoice receipt date. ESVYDA! INC. shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k). If the actual number of registered devices or users (as applicable) exceed the number of licenses purchased by Customer in the applicable Order, then Customer shall (a) immediately cease such excess usage or (b) purchase additional licenses to cover the excess usage. Fees for excess usage shall be based on ESVYDA! INC.’s then-current price list or specified in the Order both in accordance with the GSA Schedule Pricelist. Customer acknowledges that ESVYDA! INC.’s delivery and support infrastructure may enable ESVYDA! INC. to access the device or user count for the SaaS Product. Upon written notice by ESVYDA! INC., Customer shall certify in writing the number and type of registered devices or users.

5. Confidentiality.

a. Definition. “Confidential Information” means non-public information provided by one party (“Discloser”) to the other (“Recipient”) that is designated as confidential or reasonably should be considered as such, excluding information that (i) is or becomes public through no fault of the Recipient, (ii) was known to Recipient before the disclosure, (iii) is disclosed to Recipient by a third party without violation of any confidentiality restrictions, or (iv) is independently developed by the Recipient without access to or use of the Discloser’s information. Confidential Information includes but is not limited to all SaaS Products (and any derivatives, performance data, benchmark results, security assessments, product roadmaps and any other technical information relating to the SaaS Products), Documentation and its derivatives, and ESVYDA! INC.’s pricing.

b. Non-disclosure and Non-Use. The Recipient shall (i) only use the Confidential Information of the Discloser to exercise its rights and/or to perform under this Agreement, (ii) use the same degree of care to prevent unauthorized use and disclosure of Discloser’s Confidential Information as it does for its own confidential information, but in no event less than reasonable care, and (iii) with respect to employees, contractors, or agents of Recipient, limit access to the Discloser’s Confidential Information only to those employees, contractors, or agents who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified in this Section 5. The Recipient may disclose the Discloser’s Confidential Information to the extent required by any court, governmental body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to the Discloser of such disclosure. Upon written request of the Discloser, the Recipient shall return or destroy, at Discloser’s option, the Discloser’s Confidential Information. ESVYDA! INC. recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

6. Ownership. ESVYDA! INC. and its suppliers own and retain all right, title, and (except as expressly licensed in this

Esvyda! Inc

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Agreement) interest in and to the SaaS Product and its derivative works. Customer is not obligated to provide ESVYDA! INC. with any suggestions or feedback about the products or services (“Feedback”). To the extent Customer does provide Feedback to ESVYDA! INC., Customer assigns ownership of such Feedback to ESVYDA! INC. and ESVYDA! INC. may use and modify such Feedback without any restriction or payment. ESVYDA! INC. acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

7. Indemnity.

a. Indemnification by ESVYDA! INC. ESVYDA! INC. shall at its cost and expense (i) have the right to intervene to defend or settle any claim brought against Customer and its directors, officers and employees (“Customer Indemnitee(s)”) by an unaffiliated third party alleging that Customer’s use of the SaaS Product infringes or violates that third party’s intellectual property right(s), and (ii) pay, indemnify and hold Customer Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

b. Remedies. If a claim under Section 7.a occurs or in ESVYDA! INC.’s opinion is reasonably likely to occur, ESVYDA! INC. may at its expense and sole discretion: (i) procure the right to allow Customer to continue using the applicable SaaS Product, (ii) modify or replace the applicable SaaS Product to become non-infringing, or (iii) if neither (i) nor (ii) is commercially practicable, terminate Customer’s license to the affected portion of applicable SaaS Product and refund a portion of the pre-paid, unused license fees paid by Customer corresponding to such SaaS Product.

c. Exclusions. ESVYDA! INC. shall have no obligations under this Section 7 if the claim is based upon or arises out of: (i) any modification to the applicable SaaS Product not made by or at the direction of ESVYDA! INC., (ii) any combination or use of the applicable SaaS Product with any third-party equipment, products or systems, to the extent that such claim is based on such combination or use, (iii) Customer’s continued use of the allegedly infringing technology after being notified of the infringement claim, (iv) Customer’s failure to use Updates made available by ESVYDA! INC., (v) Customer’s failure to use the SaaS Product in accordance with the applicable Documentation, and/or (vi) use of the SaaS Product outside the scope of the license granted under this Agreement. This Section 7 constitutes Customer’s sole and exclusive remedies, and ESVYDA! INC.’s entire liability, with respect to infringement of third-party intellectual property rights.

d. Reserved.

e. Procedures. Each indemnitor’s indemnification obligation is conditioned on the indemnitee: (i) giving the indemnitor prompt written notice of such claim, (ii) permitting the indemnitor to control and direct the defense or settlement of such claim, provided the indemnitor shall not settle any claim in a manner that requires the indemnitee to admit liability or pay money without the indemnitee’s prior written consent, and (iii) providing the indemnitor all reasonable assistance in connection with the defense or settlement of such claim, at the indemnitor’s cost and expense.
8. Support and Maintenance Services, Hardware, and Resale Products.

a. Support and Maintenance Services. Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in Schedule B, attached hereto.

b. Third-Party Services. The Software may contain features designed to interface with applications or services provided or made available by third parties ("Third Party Services"). In order to use a feature in connection with a Third-Party Service, Customer must have a license from the provider of the relevant Third-Party Service. If the Third-Party Services are no longer available or if the applicable third-party provider no longer allows the Third-Party Services to interface with the Software, then such features will no longer be available or function in the Software. ESVYDA! INC. and the provider of the applicable Third-Party Service disclaim all warranties, indemnities, obligations, and other liabilities in connection with any interface or integration with the Third-Party Service. Further, ESVYDA! INC. disclaims all warranties, indemnities, obligations, and other liabilities in connection with any Third-Party Service.


a. SaaS Product. ESVYDA! INC. represents and warrants to Customer that the SaaS Product materially conforms to the specifications specified in the relevant Documentation. Customer must notify ESVYDA! INC. of any warranty deficiencies within thirty (30) days from the provision of the deficient SaaS Product. Customer’s sole and exclusive remedy and the entire liability of ESVYDA! INC. for ESVYDA! INC.’s breach of this warranty will be for ESVYDA! INC., at its option, to (i) repair such SaaS Product (and/or deliver new applicable Software) or (ii) terminate the applicable License Term and refund any prepaid, unused subscription fees paid to ESVYDA! INC. for the unused period of any such terminated License Term.

b. Professional Services. Customer may order ESVYDA! INC. professional services from any authorized reseller or directly from ESVYDA! INC. Such professional services shall be subject to the terms and conditions of this Agreement and mutually agreed-upon statement of work (if any). For ninety (90) days following the date of delivery of any professional service by ESVYDA! INC. to Customer, ESVYDA! INC. represents and warrants that such professional services shall be professional, workman-like and performed in a manner conforming to generally accepted industry standards and practices for similar services. Customer’s sole and exclusive remedy and the entire liability of ESVYDA! INC. for ESVYDA! INC.’s breach of this warranty will be for ESVYDA! INC., at its option, to re-perform the non-conforming services or refund the fees paid for such non-conforming professional services.

c. Exclusions. The express warranties do not apply if the applicable SaaS Product or hardware (i) has been modified, except by or at the direction of ESVYDA! INC., (ii) has not been installed, used, or maintained in accordance with this Agreement and Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, and/or (iv) is used with equipment, products or systems not specified in the Documentation. Additionally, these warranties only apply if notice of a warranty claim is provided within the applicable warranty period.

d. Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY
10. Term and Termination. The access rights granted herein with respect to the SaaS Product shall remain effective until the License Term for the relevant SaaS Product expires or the license for the relevant SaaS Product is terminated. This Agreement shall remain effective until the earliest of termination in accordance with this Section 10, or expiration of the applicable License Term. If ESVYDA! INC. agrees to reinstate a lapsed subscription license, then the terms of this Agreement shall apply. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, ESVYDA! INC. shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. In addition, the parties may terminate this Agreement by mutual written consent. All other licenses terminate upon expiration or termination of this Agreement. In addition, Sections 1, 3-7, and 9-12, and all liabilities that accrue prior to termination shall survive expiration or termination of this Agreement for any reason. For ninety (90) days after the expiration or termination of this Agreement, upon Customer’s request, ESVYDA! INC. shall permit Customer to access the SaaS Product solely to the extent necessary for Customer to retrieve applications uploaded to such SaaS Product by Customer. After such 90-day period, ESVYDA! INC. may delete all Customer Data in ESVYDA! INC.’s possession or control.

11. Limitation of Liabilities. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF OR FOR LIABILITY ARISING OUT OF SECTION 3 (RESTRICTIONS), 5 (CONFIDENTIALITY) OR A PARTY’S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR CUSTOMER’S PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (a) ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, OR (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO ESVYDA! INC. FOR THE RELEVANT SAAS PRODUCT, HARDWARE, OR SERVICE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THIS AGREEMENT. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.


a. Export/Import. The SaaS Product and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer agrees to comply with all such regulations applicable to Customer, including obtaining applicable
import licenses.

b. **U.S. Government End Users.** The SaaS Product and Documentation are “commercial items,” as that term is defined in 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212, the SaaS Product and Documentation are being licensed to U.S. Government end users only as “commercial items” and with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.

c. **In-Licensed Materials and Open Source.** The SaaS Product may contain or may operate with software services or other technology that is not owned by ESVYDA! INC. but has been licensed to ESVYDA! INC. by a third party and is necessary for the normal operation of the Software (“In-Licensed Materials”) or that is available under open source or free software licenses. The In-Licensed Materials may be subject to additional terms and conditions, as identified on [https://esvyda.net/en/terms/](https://esvyda.net/en/terms/) or as otherwise made available to Customer. To the extent ESVYDA! INC uses open source software in the Software, the terms and restrictions set forth herein shall not prevent or restrict Customer from exercising additional or different rights to such open source software in accordance with the applicable open source licenses.

d. **Governing Law and Jurisdiction.** Except as otherwise provided in Schedule A (if applicable), this Agreement, and the rights and duties of the parties arising from this Agreement, shall be governed by, construed, and enforced in accordance with the Federal laws of the United States. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply.

e. **Assignment.** Neither party may assign this Agreement without prior written consent of the other party. Any assignment in violation of this Section 12.e shall be void. Subject to the foregoing, all rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.

f. **Data Communications.** ESVYDA! INC shall only collect, access, use, store, safeguard, disclose and transfer (“Process”) Personal Information (i) for the purposes of this Agreement, including without limitation, to implement and deliver the SaaS Product and its features and associated services, provide Customer support, and help Customer prevent or address service or technical problems, (ii) as otherwise expressly permitted by Customer in writing, or (iii) as compelled by law. Customer shall make such disclosures, obtain such consents, and provide such access, choices and other applicable rights to individual users with regard to the Processing of Personal Information as are required under applicable law, rules or regulations. “Personal Information” means any information relating to an identified or identifiable individual user that is obtained by or communicated to ESVYDA! INC by Customer in performance by ESVYDA! INC of its obligations under this Agreement. ESVYDA! INC collects, analyzes, and uses aggregated, de-identified technical data and related information (such as product or feature usage, device metrics/metadata and/or mobile application usage) to facilitate market research, product development/improvement and to provide support and maintenance services. ESVYDA! INC may use, store, or disclose such information or material derived from such information, as long as it is in a form that does not identify or is not attributable to any individual.
g. Reserved.

h. Publicity. ESVYDA! INC may publicly disclose that Customer is a customer of ESVYDA! INC and a licensee of the SaaS Product, including in a list of ESVYDA! INC customers and other promotional materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

i. Independent Contractor. The parties are independent contractors. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.

j. Customer Affiliates. An Affiliate may purchase ESVYDA! INC products and/or services either by executing a participation agreement with ESVYDA! INC or through ESVYDA! INC’s acceptance of an Order issued by such Affiliate or Authorized Reseller (as applicable). Upon execution of a participation agreement by Affiliate or, if the Affiliate issues a purchase order referring to this Section 12.j, that is accepted by ESVYDA! INC, such Affiliate shall be deemed to have purchased such products and/or services hereunder, and such Affiliate shall be bound by and shall comply with the terms and conditions of this Agreement as a “Customer” under the Agreement.

k. Waiver & Severability; Amendments. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other provision or any subsequent breach. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect. This Agreement may only be amended, or any term or condition set forth herein waived, by written consent of both parties.

l. Notices. Except as otherwise provided in this Agreement, all legal notices to Customer will be given in writing to any Customer address listed on the applicable Order. All legal notices to ESVYDA! INC will be given in writing to: ESVYDA! INC, Inc., 293 Esther Ave Campbell. CA 95008. Such notices will be effective (a) when personally delivered, (b) on the reported delivery date if sent by a recognized international or overnight courier or by fax, or (c) five business days after being sent by registered or certified mail (or ten days for international mail). For clarity, purchase orders, invoices, and other documents relating to order processing and payment are not legal notices and may be delivered electronically in accordance with ESVYDA! INC and Customer’s standard ordering procedures.

m. Entire Agreement. This Agreement consists of these terms and conditions, and the attached schedule(s), which are incorporated by reference. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and cancels all prior agreements, representations, communications, and understandings of the parties, written or oral, relating to such subject matter, and is not intended to confer upon any person other than the signatories below any rights or remedies. This Agreement prevails over any conflicting, or additional terms of any ordering document, acknowledgment, confirmation, or other document issued by Customer before or after the execution of this Agreement unless such conflicting or additional terms have been introduced via an amendment and accepted in writing by both parties. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement.
HIPAA BUSINESS ASSOCIATE AGREEMENT

1) Recitals:

A. _____________________________, as a “Covered Entity” (defined below) wishes to disclose certain information to ESVYDA! Inc., hereafter known as the “BUSINESS ASSOCIATE” (defined below) pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. _____________________________, And ESVYDA! Inc. intend to protect the privacy and provide for the security of PHI disclosed to ESVYDA! Inc. pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

C. As part of the HIPAA Regulations, the Privacy Rule and Security Rule (defined below) requires _____________________________, to enter into an Agreement containing specific requirements with ESVYDA! INC., prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations (“C.F.R”) and contained in this Agreement.

The parties agree as follows:

2) Definitions:

“HIPAA” collectively means the administrative simplification provision of the Health Insurance portability and Accountability Act, enacted by the USA congress, and its implementing regulations, including privacy rule, the Breach Notification Rule, and the Security Rule, as amended from time to time, including by the Health Information technology for Economic and Clinical Health (“HITECH”) Act and by the modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification rules under the Health Information Technology for Economic and Clinical health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule.

A. Breach shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].

B. Business Associate shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

C. Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

D. Designated Record Sets shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501
E. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

F. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

G. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

H. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

I. **Protected Health Information** or PHI means any information, whether oral or recorded in any form or medium: (i) that 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 (ii) that 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 shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information. [45 C.F.R. Sections 160.103, 164.501]

J. **Protected Information** shall mean PHI provided by _________________, to ESVYDA! Inc. or created or received by ESVYDA! Inc. on behalf of _________________.

K. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

L. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

3) **Obligations of ESVYDA! Inc.**:

A. **Permitted Uses**: ESVYDA! Inc. shall not use Protected Information except for the purpose of performing ESVYDA! Inc., obligations under the Agreement as permitted under the Agreement. Further, ESVYDA! Inc. shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by ____________________________, However, ESVYDA! Inc. may use Protected Information (i) for the proper management and administration of ESVYDA! Inc. or (ii) to carry out the legal responsibilities of ESVYDA! Inc. [45 C.F.R. Sections 164.504(e)(2)(i), 164.501(e)(2)(ii)(A) and 164.504(e)(4)(i)]

B. **Permitted Disclosures**: ESVYDA! Inc. shall not disclose Protected Information except for the purpose of performing ESVYDA! Inc., obligations under the Agreement and as permitted under the Agreement. ESVYDA! Inc. shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by ____________________________, If ESVYDA! Inc., discloses Protected Information to a third party, ESVYDA! Inc., must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify ESVYDA!
C. Prohibited Uses and Disclosures: **ESVYDA! Inc.** shall not use or disclose Protected Information for fundraising or marketing purposes. **ESVYDA! Inc.** shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which PHI solely relates [42 U.S.C. Section 17935(a)]. **ESVYDA! Inc.** shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of _______________________, and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however this prohibition shall not affect payment by _______________________, to **ESVYDA! Inc.**, for services provided pursuant to the Agreement.

D. Appropriate Safeguards: **ESVYDA! Inc.** shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312 [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. **ESVYDA! Inc.** shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]

E. Reporting of Improper Access, Use or Disclosure: **ESVYDA! Inc.** shall report to _______________________, in writing of any access, use or disclosure of Protected Information not permitted by the Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than two (2) business days after discovery [42 U.S.C Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].

F. Business Associate’s Agents: **ESVYDA! Inc.** shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to **ESVYDA! Inc.**, with respect to such PHI and implement the safeguards required by paragraph C. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. **ESVYDA! Inc.** shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation [45 C.F.R. Sections 164.530(f) and 164.530(e)(1)].

G. Access to Protected Information: This provision applies only if the **ESVYDA! Inc.** maintains a designated record set on behalf of _______________________. **ESVYDA! Inc.** shall make Protected Information maintained by **ESVYDA! Inc.**, or its agents or subcontractors in Designated Record Sets available to _______________________, for inspection and copying within ten (10) days of a request by _______________________, to enable _______________________, to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If **ESVYDA! Inc.** maintains an Electronic Health Record, **ESVYDA! Inc.** shall provide such information in electronic format to _______________________, to fulfill its
obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

H. Amendment of PHI: This provision applies only if ESVYDA! Inc. maintains a designated record set on behalf of ________________________, within ten (10) days of receipt of a request from ________________________, for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, ESVYDA! Inc., or its agents or subcontractors shall make such Protected Information available to ________________________, for amendment and incorporate any such amendment to enable ________________________, to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526.

I. Accounting Rights: Within ten (10) days of notice by ________________________, of a request for an accounting of disclosures of Protected Information, ESVYDA! Inc., and its agents or subcontractors shall make available to ________________________, the information required to provide an accounting of disclosures to enable ________________________, to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including, but not limited to 42 U.S.C. Section 17935(c), as determined by ________________________, agrees to implement a process that allows for an accounting to be collected and maintained by ESVYDA! Inc. and its agents or subcontractors for at least seven (7) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that ESVYDA! Inc. maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected 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. In the event that the request for an accounting is delivered directly to ESVYDA! Inc., or its agents or subcontractors, ESVYDA! Inc. shall within five (5) days of a request forward it to ________________________, in writing. It shall be ________________________, responsibility to prepare and deliver any such accounting requested. ESVYDA! Inc. shall not disclose any Protected Information except as set forth in Sections 2.b. of this Business Associate Agreement [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph i shall survive the termination of this Agreement.

J. Government Access to Records: ESVYDA! Inc. shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to ________________________, and to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) for purposes of determining ESVYDA! Inc. compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. ESVYDA! Inc. shall provide to ________________________, a copy of any Protected Information that ESVYDA! Inc. provides to the Secretary concurrently with providing such Protected Information to the Secretary.

K. Minimum Necessary: ESVYDA! Inc. (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure [42 U.S.C. Section
ESVYDA! Inc. understands and agrees that the definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary of the United States Department of Health and Human Services with respect to what constitutes “minimum necessary.”

L. Data Ownership: ESVYDA! Inc., acknowledges that ESVYDA! Inc. has no ownership rights with respect to the Protected Information.

M. Notification of Breach: During the term of the Agreement, ESVYDA! Inc. shall notify ___________________________, without unreasonable delay and in no case later than two (2) business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which ESVYDA! Inc. becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Such notice shall include, but not be limited to, the identification of each individual whose unsecured protected health information has been or is reasonably believed by the ESVYDA! Inc. to have been accessed, acquired, or disclosed during such breach. ESVYDA! Inc. shall provide ___________________________, with any other available information that the ___________________________, is required to include in notification to the individual under 45 C.F.R. Section 164.404(c) at the time of the notification required by this subparagraph m or promptly thereafter as information becomes available. ESVYDA! Inc. shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

N. Breach Pattern or Practice by ___________________________, Pursuant to 42 U.S.C. Section 17934(b), if ESVYDA! Inc. knows of a pattern of activity or practice of the ___________________________, that constitutes a material breach or violation of the ___________________________, obligations under the Agreement, ESVYDA! Inc. must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, ESVYDA! Inc. must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of the United States Department of Health and Human Services. ESVYDA! Inc. shall provide written notice to ___________________________, of any pattern of activity or practice of ___________________________, that ESVYDA! Inc. believes constitutes a material breach or violation of the ___________________________, obligations under the Agreement within five (5) days of discovery and shall meet with ___________________________, to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

4) Termination:

A. Material Breach: A breach by ESVYDA! Inc. of any provision of this Business Associate Agreement, as determined by ___________________________, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e) (2) (iii)]
B. Effect of Termination: Upon termination of the Agreement for any reason, ESVYDA! Inc., shall, at the option of ________________, return or destroy all Protected Information that ESVYDA! Inc., or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by __________________________, shall continue to extend the protections of Section 3 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI feasible [45 C.F.R. Section 164.504(e)(ii)(I)]. If ________________, elects destruction of the PHI, ESVYDA! Inc. shall certify in writing to ________________, that such PHI has been destroyed.

5) Amendment to Comply with Law: ________________, and ESVYDA! Inc., acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Business Associate Agreement 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 HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that ________________, must receive satisfactory written assurance from ESVYDA! Inc. and that ESVYDA! Inc. will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the Business Associate Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. ________________, may terminate the Agreement upon thirty (30) days written notice in the event (i) ESVYDA! Inc. does not promptly enter into negotiations to amend this Business Associate Agreement when requested by ________________, pursuant to this Section or (ii) ESVYDA! Inc. does not enter into an amendment to this Business Associate Agreement providing assurances regarding the safeguarding of PHI that ________________, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

6) Survival: The respective rights and obligations of ESVYDA! Inc. shall survive the termination of the Agreement.

7) Interpretation: Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

COVERED ENTITY: 
________________________

Name: ___________________________________________
Title: ____________________________________________
Date: ____________________________________________
Address: _________________________________________
Phone: ___________________________________________

BUSINESS ASSOCIATE: ESVYDA! Inc.
ELIAS LOZANO, CEO
Date: ________________________________
293 Esther Avenue,
Campbell, California, 95008
USA
C: (408) 829-0985
ESVYDA TERMS AND CONDITIONS

1. Definition of Terms

“ESVYDA” means ESVYDA! INC, a USA corporation.

“COMPANY” means the party who represents the customer, client or subscriber for the services covered by the terms and conditions.

“Provider” has the same meaning as “health care provider” given in 45 CFR §160.103 and shall refer to the Licensee when appropriate.

“Patient(s)” means the patients/consumers who are registered on the Platform.

“Authorized User” means those users designated by COMPANY in the Program administration screens who are (i) the Workforce of COMPANY, (ii) patients of COMPANY (“Patients,”) or (ii) other individuals, corporations, or entities that are not competitors of “ESVYDA” and that have a valid HIPAA BAA.

“Platform” means the patient monitoring, communication and engagement platform described in this agreement utilizing the Software and Work Product.

“Work Product” means the any software, documentation, deliverables and other documents, work product and materials related there to, including but not limited to all Intellectual Property Rights in any of the foregoing, that Esvyda Inc. is required to or otherwise does create or provide in connection with any services provided under this agreement including implementation, development or customization services set forth in the Statement of Work (SOW).

“Software” means the computer- or machine-readable set of instructions that provide the functionality for the Platform, in machine-readable format; however, Software shall not include the Source Code for the Platform and shall not include other updates to the Platform.

“Source Code” means a set or sets of instructions expressed in a non-machine language and/or human-readable format from which a machine-readable version of the Software may be created.

“Effective Date” means the date of this Agreement as set out on the front page of this Agreement.

“System” is defined as each distinct production Program with its database. Test, development, failover and standby databases are not required to be licensed as systems; however, Licensee may run the program on these databases.

“Terms and Conditions” means the terms and conditions each Authorized Patient shall enter into directly with Esvyda Inc. or COMPANY through the Platform in the form prescribed by Esvyda Inc., or in a form that COMPANY shall prescribe provided that such form is acceptable to Esvyda, as amended from time to time.

“Program Documentation” is defined as the Program user manual and Program installation manuals.

“Material” refers to any physical or digital document or information provided either by “ESVYDA” or “COMPANY”

Software as a service (SaaS)
This agreement sets forth that terms of use includes “ESVYDA” Software as a Service (“SERVICES”) that includes: Web Application, any other software, content, or other applications (including without limitation the mobile applications) offered by “ESVYDA” in connection therewith.
“ESVYDA” will maintain and operate the “platform” subject to the terms and conditions of this Agreement, the SOW, applicable federal and state laws, rules and regulations, and the Business Associate Agreement. “ESVYDA” will make all reasonable efforts to make the software as a service generally available to COMPANY and "Authorized Users" 24 hours per day, 7 days per week, 365 days per year; however, the “platform” availability may be temporarily suspended for scheduled maintenance or unscheduled interruptions.

Service description
This software as a service is designed to monitor biometrics as well as tracking other data associated with the “chronic conditions” such as: management weight, management hypertension and management diabetes. The software as a service consists of system administration, system management, and system monitoring activities that “ESVYDA” performs to allow the administration of the medical records associated to this service, medical prescription such as: telehealth monitoring, medicines, nutrition and fitness activities; the software as a service integrates optionally the medical billing services. We provide a mobile application (“mobile app”) that the client may use with 3rd party medical devices (“please refer to the list available on Bluetooth “ESVYDA” Compatible List”). The client may use the “mobile app” in connection with the “software as a service” only after: (a) if COMPANY have purchased the “services” or received the authorization from a “Health Care Provider” or Health Plan (“insurance company”), (b) COMPANY must read and agree with the terms and conditions, (c) all required information to be provided by Client is entered into the computer system for Company’s monitoring facility.

Account Registration, Security, Passwords Means Of Accessing The Site And Content
An account may be required to use the service. During registration, COMPANY’s users will be asked to set a password. COMPANY’s users are responsible for keeping their password confidential and for the activity that happens through their “ESVYDA” account. “ESVYDA” is not responsible for any loss arising out of unauthorized use of their “ESVYDA” account. COMPANY’s users agree to notify “ESVYDA” immediately of any use of COMPANY user’s password(s) or account(s) that they did not authorize or that is not authorized by these Terms of Use.

COMPANY agrees not to access or use the Site and Services in any manner that could damage, disable, overburden, or impair any “ESVYDA” accounts, computer systems or networks. COMPANY’s users agree not to attempt to gain unauthorized access to any parts of the Site or any “ESVYDA” accounts, computer systems or networks. COMPANY’s users agree not to interfere or attempt to interfere with the proper working of the Site or any “ESVYDA” accounts, computer systems or networks. COMPANY’s users agree not to use any robot, spider, scraper or other automated means to access the Site or any “ESVYDA” accounts, computer systems or networks without “ESVYDA”’s express written permission.

Account Features
COMPANY can access the information stored in “ESVYDA” such PHI, Medical History, Prescriptions, Medical Readings, Communication Log, Billing history and Encounter logs through Web Browsers and/or “ESVYDA” Mobile App.

No Unlawful or Prohibited Use
COMPANY agree not to use the Site and the Service, or Content provided on or through the Site or Service, for any purpose that is unlawful or prohibited by these Terms of Use or the rules.

Terms Applicable to Specific Content and Areas of the Site
Some areas of the “ESVYDA”. Site or Content provided on or through the Site may have additional rules, guidelines, license agreements, user agreements or other terms and conditions that apply to COMPANY’s users access or use of that area of the Site or Content (including terms and conditions applicable to a corporation or other organization and its users). If there is a conflict or inconsistency between these Terms of Use and the rules, guidelines, license agreement, user agreement or other terms and conditions for a specific area of the Site or for specific Content, the latter shall have precedence with respect to COMPANY’s users access and use of that area of the Site or Content.
Restrictions On Use of the Services
COMPANY agrees not to use or permit use of the services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, “junk mail”, “spam” or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations.

In addition to any other rights afforded to “ESVYDA” under the agreement, “ESVYDA” reserves the right to remove or disable access to any material that violates the foregoing restrictions. “ESVYDA” shall have no liability to COMPANY’s users in the event that “ESVYDA” takes such action.

COMPANY agrees to defend and indemnify “ESVYDA” against any claim arising out of a violation of COMPANY’s users obligations under this section.

Medical Advice
“ESVYDA” does not offer medical advice or diagnoses, or engage in the practice of the medicine. Our software as a service is not designed to be substitute for professional medical advice, diagnosis, or treatments, we only offered technological tools to facilitate access and management of information. Patients should always speak with their doctor or health care professional before they can start, stop, or change any prescribed part of their health care plan or treatment and to determine what course of therapy is right for them.

Never delay or disregard seeking professional medical advice from patient’s doctor or other qualified health care provider because of something COMPANY’s users have read on “ESVYDA” Web Site or “ESVYDA” Software.

Patients are solely responsible for the actions or any decision they take on the documents or information available through the Software. If the patient is at a high risk, call 911 immediately.

Alerts and reminders by Esvyda
“ESVYDA” Alert and Reminder System is not an intrusion detection system or medical device and does not provide medical advice, which should be secured from qualified medical personnel. The alert system does not detect 100% of the alerts conditions. Digital cellular service not available everywhere and at all times. COMPANY acknowledge that “ESVYDA” does not control the transfer of Alerts and Reminders over communications facilities, including the internet (wired or wireless), and that the service may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

“ESVYDA” service may provide from time to time automatic alerts and reminders. The alerts or reminders may be sent to COMPANY’s users according with the system configuration. Some of these alerts or reminders may then be customized, deactivated or reactivated by COMPANY’s users.

The alerts and reminders will be sent to COMPANY’s users through the Web Application in the web browser, also to the mobile app using push notifications, by email and by text messages to cellular phone number provided. Any changes made to COMPANY’s users phone number or email account is their responsibility to keep updated in the “ESVYDA” Software as a service.

The alerts and reminders are not encrypted. Not personal identification or password are disclosed by this means, however, any person who has access to emails or mobile phone could see information related with weight, blood pressure and glucose level and samples; medication information, nutrition information and fitness activities.
COMPANY understands and agrees that the alerts and reminders may have delays based on communication facilities restrictions. “ESVYDA” will do its best effort to generate the alerts and reminders with accurate information, however, “ESVYDA” neither guarantees the delivery nor the accuracy of the content of any reminder or alert. “ESVYDA” is not responsible for any delay, or any error in the content, or misdirect delivery or any third party who can be notified of the alert or reminder.

The Web and Mobile Application
In order to use the service, the users must download the mobile application to collect data from the medical devices and/or they must access the service with a Web Browser. The following policies apply to the use of the service in connection with the web and mobile application:

The agreement is performed between COMPANY and “ESVYDA”, it does include neither Apple nor Google Inc. COMPANY’s users will only use the Mobile Application in connection with an Apple or Android device that COMPANY’s users own or control;
COMPANY’s users acknowledge and agree that Apple/Google Inc. has no obligation whatsoever to furnish any maintenance and support services with respect to the Mobile Application.
The mobile Application is licensed to COMPANY’s users on a limited, non-exclusive, non-transferrable, non-sub licensable basis. The Application is solely to be used in connection with the Service for COMPANY’s users private, personal, commercial use, subject to all the terms and conditions of this Agreement as they are applicable to the Service;
COMPANY represents and warrants that they are located in United States.
Both COMPANY and “ESVYDA” acknowledges and agrees that, in the use of the Mobile Application, COMPANY’s users will comply with any applicable third party terms of agreement which may affect or be affected by such use; and COMPANY’s users acknowledge and agree that “ESVYDA”, and not Apple or Google Inc, is responsible for addressing any claims COMPANY’s users or any third party may have in relation to the Application;

Rights Granted for Health Care Providers
Upon “ESVYDA” acceptance of COMPANY order and for the duration of the services term defined in the ordering document, COMPANY has the nonexclusive, non-assignable, royalty free, worldwide limited right to use the services solely for COMPANY’s internal business operations and subject to the terms of the agreement. COMPANY may allow their users to use the services for this purpose and COMPANY is responsible for their users’ compliance with the agreement. The services are provided as described in, and subject to, the services policies referenced in the ordering document.

COMPANY acknowledges that “ESVYDA” has no delivery obligation and will not ship copies of the “ESVYDA” programs to COMPANY as part of the services. COMPANY agrees that COMPANY does not acquire under the agreement any license to use the “ESVYDA” programs specified in the ordering document in excess of the scope and/or duration of the services.

Upon the end of the agreement or the services thereunder, the right to access or use the ESVYDA” programs specified in the ordering document and the services shall terminate.

The health care provider must sign “HIPPA Business Associate Agreement/BAA” in order to obtain access to this software as a service, to disclose PHI.

Data protection and Privacy Policy Process personal Data
“ESVYDA” will process Personal Data on behalf of the COMPANY in accordance with the applicable provisions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d through d-8, as amended or supplemented (“HIPAA”), and the requirements of any regulations promulgated there under including without limitation the federal privacy regulations as contained in 45 CFR Part 142, as amended or supplemented.
Privacy Notice
The Esvyda Privacy Notice describes details on what we receive from THE COMPANY to use the Services and how “ESVYDA” uses that information. Our system is HIPAA compliant and “ESVYDA” protects privacy. The services policies referenced in the ordering document specifies our respective responsibilities for maintaining the security of the data in connection with the service. We use the information we receive through the Services as described in our Esvyda privacy policy.

“ESVYDA” reserves the right to provide the services from locations, and/or through use of subcontractors, only inside United States of America.

COMPANY agrees to provide any notices and obtain any consent related to use of the services and “ESVYDA” will provide the services, including those related to the collection, use, processing, transfer and disclosure of personal information. COMPANY shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of COMPANY’s data. COMPANY only may provide information that COMPANY owns or that COMPANY has the rights to use it, when COMPANY transmit, create, submit or display any information through the “ESVYDA” Software as a service. Once COMPANY provides access to that information to “ESVYDA” Software as a service, “ESVYDA” is able to fully use and exploit that information with the service; however, “ESVYDA” may use that information according to Esvyda privacy policy and applicable USA law.

Information Access Management Policy
“ESVYDA” allows access only to those persons and entities with a need for access in a basic tenet of security. All “ESVYDA” workforce members who need access to ePHI as assigned in their job description will only have access to the minimum necessary to do their job. The supervisor (“ESVYDA” security officer) of the workforce member is the one who will determine what level of access is needed. The supervisor will then follow the steps outlined in Access Establishment & Modification for actual account request. The HIPAA Security Officer will regularly audit the levels of access of the various systems to ensure the minimum necessary standard is met.

Indemnification
If a third party makes a claim against either COMPANY or “ESVYDA” (“Recipient” which may refer to COMPANY or “ESVYDA” depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, or material (“Material”) furnished by either COMPANY or “ESVYDA” (“Provider” which may refer to COMPANY or “ESVYDA” depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights, the Provider, at its sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

Notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);

Gives the Provider sole control of the defense and any settlement negotiations; and gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim. If the Provider believes or it is determined that any of the Material may have violated a third party’s intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects “ESVYDA”’s ability to meet its obligations under the relevant order, then “ESVYDA” may, at its option and upon 30 days prior written notice, terminate the order. The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider’s user documentation or services policies or if the Recipient uses a version of the Materials which has been
superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon (i) any information, design, specification, instruction, software, data, or material not furnished by the Provider, or (ii) any Material from a third party portal or other external source that is accessible to COMPANY within or from the service (e.g., a third party Web page accessed via a hyperlink). “ESVYDA” will not indemnify COMPANY to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by “ESVYDA”.

“ESVYDA” will not indemnify COMPANY for infringement caused by its actions against any third party if the services as delivered to COMPANY and used in accordance with the terms of the agreement would not otherwise infringe any third party intellectual property rights. “ESVYDA” will not indemnify COMPANY for any infringement claim that is based on: (1) a patent that COMPANY were made aware of prior to the effective date of the agreement (pursuant to a claim, demand, or notice); or (2) COMPANY actions prior to the effective date of the agreement. This section provides the parties’ exclusive remedy for any infringement claims or damages.

Ownership and Restrictions
COMPANY retains all ownership and intellectual property rights in and to their data. “ESVYDA” or its licensors retain all ownership and intellectual property rights to the services and “ESVYDA” programs.

“ESVYDA” retains all ownership and intellectual property rights to anything developed and delivered under the agreement.

Third party technology that may be appropriate or necessary for use with some “ESVYDA” programs is specified in the program documentation or ordering document as applicable. COMPANY retains the right to use such third party technology is governed by the terms of the third party technology license agreement specified by “ESVYDA” and not under the agreement.

COMPANY may not:

Remove or modify any program markings or any notice of “ESVYDA”’s or its licensors’ proprietary rights;
Make the programs or materials resulting from the services available in any manner to any third party for use in the third party’s business operations (unless such access is expressly permitted for the specific program license or materials from the services COMPANY have acquired);
Modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to “ESVYDA”;
Disclose results of any services or program benchmark tests without “ESVYDA”’s prior written consent; and License, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the services, “ESVYDA” programs or materials available, to any third party other than, as expressly permitted under the terms of the agreement.

The rights granted to COMPANY under the agreement are also conditioned on the following:

The rights of any user licensed to use the services (e.g., on a “named user” basis) cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user, in which case the prior authorized user shall no longer have any right to access or use the license); Except as expressly provided herein, no part of the services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, Mechanical, photocopying, recording, or other means; and COMPANY agrees to make every reasonable effort to prevent unauthorized third parties from accessing the services.
**Warranties, disclaimers and exclusive remedies General**

“ESVYDA” warrants that the services will perform in all material respects in accordance with the services policies referenced in the ordering document. If the services provided to COMPANY for any given month during the services term were not performed as warranted, COMPANY must provide written notice to “ESVYDA” as specified in the ordering document no later than five business days after the last day of that particular month or within such other period stated in the ordering document.

“ESVYDA” DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT “ESVYDA” WILL CORRECT ALL SERVICES ERRORS. COMPANY ACKNOWLEDGE THAT “ESVYDA” DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. “ESVYDA” IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

FOR ANY BREACH OF THE ABOVE WARRANTIES, “ESVYDA” WILL REMIT A SERVICES FEE CREDIT TO COMPANY CALCULATED AT TEN PERCENT (10%) OF NET MONTHLY FEES FOR THE APPLICABLE SERVICES FOR THE MONTH IN WHICH THE BREACH OCCURRED. THE CREDIT WILL BE PROVIDED ONLY TOWARDS ANY OUTSTANDING BALANCE FOR SERVICES OWED TO “ESVYDA”, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT ITS EXCLUSIVE REMEDY, AND “ESVYDA”’S SOLE LIABILITY, FOR ALL BREACHES OF ANY WARRANTY SPECIFIED IN THE AGREEMENT.

TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

**CPT codes disclaimer**

AMA Disclaimer of Warranties and Liabilities: CPT is provided "as is" without warranty of any kind, either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. No fee schedules, basic unit, relative values or related listings are included in CPT. The AMA does not directly or indirectly practice medicine or dispense medical services. The responsibility for the content in the “ESVYDA” Web Platform is of “ESVYDA” and no endorsement by the AMA is intended or implied. The AMA disclaims responsibility for any consequences or liability attributable to or related to any use, non-use, or interpretation of information contained or not contained in this service. This agreement will terminate upon notice if COMPANY violates its terms. The AMA is a third party beneficiary to this agreement.

The scope of this license is determined by the AMA, the copyright holder. Any questions pertaining to the license or use of the CPT should be addressed to the AMA. End Users do not act for or on behalf of the “ESVYDA”. “ESVYDA” DISCLAIMS RESPONSIBILITY FOR ANY LIABILITY ATTRIBUTABLE TO END USER USE OF THE CPT. “ESVYDA” WILL NOT BE LIABLE FOR ANY CLAIMS ATTRIBUTABLE TO ANY ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE INFORMATION OR MATERIAL CONTAINED ON THIS PAGE. In no event shall “ESVYDA” be liable for direct, indirect, special, incidental, or consequential damages arising out of the use of such information or material.

**Trial use of the services**

If specified in the ordering document, COMPANY may order certain services for trial, nonproduction purposes subject to the terms and conditions of the agreement. Services acquired for trial purposes are provided “as is” and “ESVYDA” does not offer any warranties for such services.

**Trademark, Copyrights and third-party content**

The Services may enable Client and Users to add links to web sites and access to content, products and services of third
In the event of an actual or threatened breach of the above confidentiality provisions, the non-breaching Party will have no adequate remedy at law and will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

Confidential Information
Definition. For purposes of this Agreement “Confidential Information” shall mean information including, without limitation, all COMPANY data, computer programs, code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial and product development plans, forecasts, strategies and information marked “Confidential”, or if disclosed verbally, is identified as confidential at the time of disclosure. In addition to the foregoing, Confidential Information shall include third party software, if any, that may be provided to COMPANY under this Agreement, including any related source or object codes, technical data, data output of such software, documentation, or correspondence owned by the applicable licensor. Confidential Information excludes information that: (i) was or becomes publicly known through no fault of the receiving Party; (ii) was rightfully known or becomes rightfully known to the receiving Party without confidential or proprietary restriction from a source other than the disclosing Party; (iii) is independently developed by the receiving Party without the participation of individuals who have had access to the Confidential Information; (iv) is approved by the disclosing Party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing Party; and (v) the receiving Party is legally compelled to disclose; provided, however, that prior to any such compelled disclosure, the receiving Party will (a) assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure and (b) cooperate fully with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection against disclosure is not obtained, the receiving Party will be entitled to disclose the Confidential Information, but only as, and to the extent, necessary to legally comply with such compelled disclosure.

Nondisclosure
During this the term of this Agreement and for a period of 2 years thereafter, each Party agrees to maintain all Confidential Information in confidence to the same extent that it protects its own similar Confidential Information, but in no event using less than reasonable care, and to use such Confidential Information only as permitted under this Agreement; Each Party agrees to only disclose the other Party’s Confidential Information to its employees: (a) with a need to know to further permitted uses of such information; and (b) who are informed of the nondisclosure/ non-use obligations imposed by this Section 5. Both parties shall take steps each determines appropriate to implement and enforce such non-disclosure/non-use obligations.

Terms of Agreement Confidential. Each of the Parties agrees not to disclose to any third party the terms of this Agreement, including pricing, without the prior written consent of the other Party hereto, except to advisors, investors and others on a need-to-know basis under circumstances that reasonably ensure the confidentiality thereof, or to the extent required by law.

Injunctive Relief. In the event of an actual or threatened breach of the above confidentiality provisions, the non-breaching Party will have no adequate remedy at law and will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

Patient/user access and usage of the service
COMPANY’s user may be required to create and register a user account (“ESVYDA” Account”) to use the Services. During registration of the “ESVYDA” Account, COMPANY’s user will be asked to provide a valid email address, and set a password of COMPANY’s user choice that COMPANY’s user will use to access the Services, either via the Site or the Mobile App. COMPANY’s user is responsible for maintaining the confidentiality of the “ESVYDA” Account and password and for restricting access to the “ESVYDA” Account, and COMPANY’s user agrees to accept responsibility for the activity that
happens through the “ESVYDA” Account. “ESVYDA” is not responsible for any loss arising out of unauthorized use of the “ESVYDA” Account. COMPANY’s user agrees to notify “ESVYDA” immediately of any use of the password(s) or account(s) that COMPANY’s user did not authorize or that is not authorized by these Terms of Service. COMPANY’s user agrees that the information COMPANY’s user provide when creating the “ESVYDA” Account will be true, accurate, current and complete, including the email address. COMPANY’s user also agrees that COMPANY’s user will keep this information accurate and up-to-date at all times. The information that COMPANY’s user provides to “ESVYDA” will be subject to Esydyda-privacy-policy.

COMPANY’s user agrees not to access or use the Site, Mobile App and Services in any manner that could damage, disable, overburden, or impair any “ESVYDA” accounts, computer systems or networks. COMPANY’s user agrees not to attempt to gain unauthorized access to any parts of the Site, Mobile App, Services or any “ESVYDA” accounts, computer systems or networks. COMPANY’s user agrees not to interfere or attempt to interfere with the proper working of the Site or any “ESVYDA” accounts, computer systems or networks. COMPANY’s user agrees not to use any robot, spider, scraper or other automated means to access the Site or any “ESVYDA” accounts, computer systems or networks without “ESVYDA”’s express written permission.

Our Services require users to create unique identifiers (such as a username and password) in order to access many areas of the Services. We utilize these unique identifiers to verify the user’s identity and eligibility, in order to protect our Clients from the release of sensitive or personally identifiable information to unauthorized users. To help protect the privacy of data COMPANY’s user transmit through the Services, where personally identifiable information is requested, we also use technology designed to encrypt the information that COMPANY’s user input before it is sent to us using Secure Sockets Layer (SSL) technology or similar encryption technology. In addition, “ESVYDA” takes steps to protect the user data we collect against unauthorized access. However, COMPANY’s user should keep in mind that this Site and the Services are run on software, hardware and networks, any component of which may, from time to time, require maintenance or experience problems or breaches of security beyond our control.

COMPANY’s user must exercise caution, good sense and sound judgment in using the Site or the Services. COMPANY’s user is prohibited from violating, or attempting to violate, the security of this Site or the Services. Any such violations may result in criminal and/or civil penalties against COMPANY’s user. “ESVYDA” may investigate any alleged or suspected violations and if a criminal violation is suspected, “ESVYDA” will cooperate with law enforcement agencies in their investigations.

COMPANY shall have no right or authority to control, terminate, or otherwise influence “ESVYDA”’s contractual relationship with any “Authorized User”.

The termination of this Agreement by either party shall have no effect on “ESVYDA”’s contractual relationship with any “Authorized User”.

Back-up of Data
“ESVYDA”, will deliver a full backup of COMPANY Data in a supported format in a disk or other media by US priority mail, if COMPANY agrees to pay the expenses.

Price and Payment
The fees and charges to be paid by COMPANY for the use of the “Software as a service” and for any Training or other services are set out in The Financial Proposal page and Payment/Billing Terms page.

If COMPANY fails to pay any amounts due under this Agreement, it will pay all reasonable expenses incurred by “ESVYDA” in collecting those sums, including legal fees and expenses.

Termination
If a Party fails to perform or observe any material term or condition of this Agreement and the failure continues unremedied for 15 days after receipt of written notice, (1) the other Party may terminate this agreement, or (2) where the failure is a nonpayment by Client of any charge when due, “ESVYDA”, may, at its option, terminate or suspend Services with
This Agreement may be terminated immediately upon written notice by either Party if the other Party becomes insolvent or involved in a liquidation or termination of business, files a bankruptcy petition, has an involuntary bankruptcy petition filed against it (if not dismissed within thirty days of filing), becomes adjudicated bankrupt, or becomes involved in an assignment for the benefit of its creditors.

COMPANY shall be responsible for payment of all charges under a terminated Agreement incurred as of the effective date of termination.

General Provisions & Force Majeure

(a) This Agreement, including any amendments and attachments hereto that are incorporated herein, constitute the entire agreement between the parties and shall be binding on the parties when accepted by COMPANY. No modification, termination or waiver of any provisions of this Agreement shall be binding upon a Party unless in writing signed by an authorized officer of the relevant Party (ies). No provision of any purchase order or other document issued by COMPANY, which purports to alter, vary, modify or add to the provisions of this Agreement, shall be binding upon “ESVYDA”, or effective for any purpose, unless accepted by “ESVYDA”, in writing.

It is further expressly understood and agreed that, there being no expectations to the contrary between the parties, no usage of trade or other regular practice or method of dealing either within the computer software industry, “ESVYDA”, industry or between the parties shall be used to modify, interpret, supplement, or alter in any manner the express terms of this Agreement or any part thereof.

(b) Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the parties, nor shall either Party have the right, power, or authority to create any obligation or duty, express or implied, on behalf of the other.

(c) The Licensed Materials shall not be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction.

(d) This Agreement may not be assigned, sublicensed or transferred, in whole or in part, by COMPANY without the prior written consent of “ESVYDA”. Any attempted assignment, subletting or transfer shall be void.

(e) If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(f) No delay or failure of “ESVYDA”, or COMPANY in exercising any right herein and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights herein. Any waiver by “ESVYDA”, or COMPANY of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach.

(g) In the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster, terrorism, fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of god, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, actions or decrees of governmental bodies or communication line failure not the fault of the affected Party or other causes beyond such Party’s reasonable control (a “Force Majeure Event”) the Party who has been so affected shall immediately give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds seven (7) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may by giving written notice immediately terminate this Agreement as provided in Section “TERMINATION”.

(h) On “ESVYDA”, request, no more frequently than weekly, COMPANY shall furnish “ESVYDA” with a signed certification (i) verifying that the Licensed Material is being used pursuant to the terms of this Agreement and (ii) listing the locations where the Licensed Material is being used.

(i) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and each of which together shall constitute a single instrument.

(j) This Agreement shall be governed by and construed under the laws of the State of California applicable to contracts made in and wholly to be performed in the State of California without regard to conflicts of law.
**Limitation of Liability**
NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE. “ESVYDA”’s MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS SOFTWARE AS A SERVICE AGREEMENT OR COMPANY’S ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO “ESVYDA” FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN COMPANY’S FAVOR AGAINST “ESVYDA” INC SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

**Waiver**
A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

**Severance**
If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**Entire agreement**
This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter they cover.

Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

**Assignment**
Neither party, without the prior written consent of the other party, which may not be unreasonably withheld, shall assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement except that neither party needs the consent of the party to assign this agreement in connection with a merger (regardless of the surviving entity) or in connection with the sale of all or substantially of the assigning party’s assets.

**Notices**
Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.

**Jurisdiction**
This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of the State of California.
The parties irrevocably agree that the courts of the State of California have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the Effective date