



## EYEFINITY'S SUPPLEMENTAL LICENSE TERMS

Eyefinity's Supplemental License Terms hereinafter set forth, as amended from time to time (these "**Eyefinity Supplemental Terms**"), form a part of the License Agreement between Customer and Eyefinity (the "**License Agreement**") and together with these Supplemental Terms, this "**Agreement**") and are hereby incorporated by reference into the License Agreement, without the need for further action. All capitalized terms set forth herein shall have the meaning set forth in the License Agreement unless expressly provided to the contrary herein.

### 1. USE OF PRODUCTS AND SERVICES

**1.1 Eyefinity On Premise Product Maintenance.** In consideration of the Software license and maintenance fees to be paid hereunder and for so long as Customer (i) is current in its payment of such fees and (ii) is not in material breach of this Agreement, Eyefinity shall provide the maintenance and support services set forth on [www.eyefinity.com/licensingexhibits](http://www.eyefinity.com/licensingexhibits). Eyefinity's obligation to provide maintenance and support services hereunder is conditioned upon the proper use of the Products and Services and does not cover Products or Services that have been (i) modified without Eyefinity's approval, (ii) used contrary to Eyefinity's instructions; (iii) serviced by anyone other than Eyefinity; or (iv) resulting from Customer's failure to implement any update furnished by Eyefinity hereunder. Eyefinity's obligations to provide maintenance and support services hereunder shall not be applicable to any product which (i) is not created by Eyefinity or a person acting at the Eyefinity's direction and (ii) is furnished by Eyefinity for use in conjunction with the Products or Services (a "Third Party Product") but Eyefinity will serve as the initial point of contact for Customer issues with Third Party Products. Eyefinity will not be obligated to furnish service hereunder if the need for such service arises from hardware malfunction, user error, conditions correctable by reference to available documentation or malfunction of programs not furnished by Eyefinity. If service is requested by Customer as a result of any of the causes specified in this section and Eyefinity accepts such request and provides such service, which such acceptance shall be made by Eyefinity in its sole discretion, Customer shall be obligated to pay for such service at Eyefinity's standard rates then in effect for time, travel and materials. Customer shall be responsible for backing up Customer's data in the On Premise Products.

**1.2 Eyefinity On Demand Service Support.** Eyefinity shall: (i) provide basic support for the On Demand Services licensed to Customer at no additional charge, and/or upgraded support if purchased, (ii) use commercially reasonable efforts to make the On Demand Services available 24 hours a day, 7 days a week, except for (a) planned downtimes as published by Eyefinity from time to time, or (b) any unavailability caused by circumstances beyond Eyefinity's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems, Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Services only in accordance with applicable laws and government regulations. Eyefinity and its third party vendors, licensors and suppliers ("Third Party Vendors") shall follow commercially reasonable data backup and disaster recovery plans.

**1.3 Eyefinity Protection of Customer Data.** Eyefinity shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data. Eyefinity shall not disclose Customer data except (a) as permitted in the Business Associate Addendum, (b) as compelled by law in accordance with the "Confidentiality: Compelled Disclosure" section below, or (c) as expressly permitted in writing by Customer.

**1.4 Customer Responsibilities.** Customer shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Customer data and of the means by which it acquired Customer data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Products or Services, and notify Eyefinity promptly of any such unauthorized access or use, (iv) support and maintain system and internet service provider requirements found on [https://www.officemate.net/officemate\\_sys\\_req.aspx](https://www.officemate.net/officemate_sys_req.aspx) and (v) use the Products and Services only in accordance with the User Guide and applicable laws and government regulations. Customer shall not (a) make the Products or Services available to anyone other than Users, (b) sell, resell, rent or lease the Products or Services, (c) use the Products or Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Products or Services to store or transmit malicious code, (e) interfere with or disrupt the integrity or performance of the Products or Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Products or Services or their related systems or networks.

**1.5 Third Party Access.** Except for vendors of Third Party Products and Services listed on the Order Form, Customer is prohibited from allowing access to the Products and Services by third parties, including but not limited to subcontractors or other service vendors hired by Customer. Any such prohibited activities or access to the Products or Services by a third party will void all warranties, express or implied, and will void any of Eyefinity's continuing maintenance obligations for the Products or Services. In the event of any such prohibited activities or access to the Products or Services by third parties, Eyefinity reserves the right to immediately cancel this Agreement (including all related Schedules thereto).

**1.6 Service Guidelines.** Customer and its Users shall use the Products and Services solely for Customer's internal business purposes as contemplated by this Agreement and shall not use the Products or Services to: (i) send spam or any other form of duplicative or unsolicited communications; (ii) harvest, collect, gather or assemble information or data regarding other Users and/or other Users' patients for uses other than Treatment (as defined by HIPAA), Payment (as defined by HIPAA), and Health Care Operations (as defined by HIPAA) without their consent; (iii) transmit through or post on the Products or Services unlawful, immoral, libelous, tortious, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors; (iv) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (v) interfere with or disrupt the integrity or performance of the Products or Services or the data contained therein; (vi) attempt to gain unauthorized access to the computer systems or networks related to the Products or Services; or (vii) harass or interfere with another user's use and enjoyment of the Products or Services. Eyefinity and/or its Third Party Vendors may, without liability to Customer, remove or delete any material from the Products or Services that Eyefinity or its Third Party Vendors determine, in their sole discretion, violate any of the guidelines set forth in this Agreement. In addition to any other remedies Eyefinity may have, Eyefinity and its Third Party Vendors reserve the right to terminate any or all of the logins provided to Customer or any User immediately and without notice, if Eyefinity or its Third Party Vendors become aware or determine, in their sole discretion, that Customer or any User is violating any of the foregoing guidelines. Customer shall be responsible for verifying the accuracy of results produced using the Products or Services and for proper use of any forms provided by Eyefinity. **Customer shall be responsible for following proper backup procedures for any other programming and all data to protect against loss or error resulting from use of any or all of the On Premise, non-hosted Products.**

**1.7 Audits.** Upon reasonable notice to Customer, Eyefinity may, either itself or through an independent third party auditor, enter on to Customer's premises during Customer's normal business hours to inspect and audit Customer's computer systems, network and records to verify that Customer's use of the Products or Services is in compliance with the terms of this Agreement.

**1.8 Patient Communications.** Through the Products, Eyefinity may provide the Customer with sample communication forms and templates applicable to different circumstances (e.g., medical prescription, visit report, etc.). Customer acknowledges and agrees that Eyefinity and its suppliers are not health care providers, the Products and Services only provide sample forms and templates, and that each provider is solely responsible for drafting or completing, customizing and authorizing final versions of any communication form used by Customer and for ensuring compliance with any applicable federal, state, or local laws, rules and regulations, including without limitation those of the American Medical Association, any state medical association, and the professional ethical guidelines which may apply to such communications.

**1.9 Customer Acknowledgement.** CUSTOMER HEREBY AGREES AND ACKNOWLEDGES THAT EYEFINITY AND ITS REPRESENTATIVES ARE IN NO WAY ACTING AS MEDICAL OR OPTICAL PROVIDERS WITH RESPECT TO ANY PATIENT OR ANY OF CUSTOMER'S RELATED PARTIES AND PROVIDERS. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THE TREATMENTS, PROCEDURES, INFORMATION, MEDICATIONS, IMAGES, PRODUCTS AND OTHER MATTERS REFERENCED BY THE PRODUCTS OR SERVICES ARE NOT INTENDED AS A RECOMMENDATION OR ENDORSEMENT OF ANY COURSE OF TREATMENT, PROCEDURE, INFORMATION, PRODUCT OR MEDICATION AND THAT THE ULTIMATE RESPONSIBILITY FOR DIAGNOSING AND TREATING ANY PATIENT RESTS WITH THE PROVIDERS TREATING SUCH PATIENT.

## **2. PROPRIETARY RIGHTS**

**2.1 Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, Eyefinity reserves all rights, title and interest in and to the Products and Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**2.2 Restrictions and Prohibited Activities.** Customer shall not (i) permit any third party to access the Products or Services except as permitted herein, (ii) create derivative works based on the Products or Services or any part thereof except

as permitted herein, (iii) copy, frame or mirror any part or content of the Products or Services, other than copying or framing on Customer's own intranets or otherwise for its own internal business purposes, (iv) reverse engineer the Products or Services, (v) modify, adapt, translate, rent, sublicense, assign, loan, resell, distribute, or network the Products or Services, or related materials, or (vi) access the Products or Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

**2.3 Feedback Rights.** Eyefinity shall have a royalty-free, worldwide, irrevocable, transferable, unrestricted, perpetual license to use and incorporate into the Products or Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Products or Services.

**2.4 Consent to Use of Data.** Customer agrees that Eyefinity and its affiliates may collect and use technical information, gathered as part of the Product or Service support services provided to Customer, if any, related to the Product or Service.

### **3. CONFIDENTIALITY**

**3.1 Definition of Confidential Information.** As used herein, "Confidential Information" means data and/or information, in any form, disclosed by the disclosing party (the "Disclosing Party") to the receiving party (the "Receiving Party") either before or after the Effective Date, which (i) relates to proposals, transactions, studies, projects or otherwise, for general or specific, present or future, product(s), services, methodologies, plans, designs, costs, prices, customer or doctor names and addresses, finances or financial information (including budgets), marketing plans or strategies (including e-commerce development plans), business matters or opportunities or offerings, equipment and other purchase matters, strategic matters, research, development, know-how and/or personnel, including, but not limited to, confidential information disclosed by third parties and/or information relating to any type of proprietary matters, of a secret nature, intellectual property matters and/or technology matters, (ii) is identified as confidential at the time of disclosure, (iii) given the nature of the information disclosed and the circumstances surrounding its disclosure, reasonably ought to be treated as Confidential Information by a person in the same industry as the Disclosing Party, or (iv) by law must be protected as Confidential Information. Confidential Information shall not, however, include information that (A) at the time of disclosure is, or subsequently becomes, available to the public or the industry through no fault or breach on the part of the Receiving Party; (B) the Receiving Party can demonstrate to have had rightfully in its possession prior to disclosure by the Disclosing Party; (C) is independently developed by the Receiving Party without the use of any Confidential Information; or (D) the Receiving Party rightfully obtains from a third party who has the right to transfer or disclose it. Protected Health Information (as defined in the HIPAA regulations) shall not be considered Confidential Information. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**3.2 Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and agrees (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees, contractors, Third Party Vendors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Schedule incorporated herein to any third party other than its Affiliates and Third Party Vendors, as well as their legal counsel and accountants without the other party's prior written consent.

### **4. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMER**

**4.1 Eyefinity Warranties.** Eyefinity warrants that (i) it has validly entered into this Agreement and has the legal power to do so, (ii) the Products and Services shall perform materially in accordance with their respective specifications as set forth in the pertinent User Manual(s) or User Guide(s) provided or made available by Eyefinity, (iii) the functionality of the Services will not be materially decreased during a subscription term, (iv) it will not transmit malicious code to Customer, provided it is not a breach of this subpart (iv) if Customer or a User uploads a file containing malicious code into the Services and later downloads that file containing malicious code. Customer, however, acknowledges that licensed software is of such complexity that it may contain inherent defects and the mere existence thereof shall not constitute a breach of this Warranty. For any breach of a warranty above, Customer's exclusive remedy shall be as provided in the "Termination for Cause" and "Refund or Payment upon Termination" sections below.

**4.2 Customer's Warranties.** Customer warrants that it has validly entered into this Agreement and has the legal power to do so.

**4.3 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER EYEFINITY NOR ANY OF ITS THIRD PARTY VENDORS MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH OF EYEFINITY AND ITS THIRD PARTY VENDORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ACCURACY OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE PRODUCTS OR SERVICES, AND ANY OTHER TECHNOLOGY OR FEATURES IN CONNECTION WITH THE PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY TREATMENTS, PROCEDURES, INFORMATION, IMAGES, THIRD-PARTY PRODUCTS, MEDICATIONS AND OTHER MATTERS REFERENCED BY THE PRODUCTS OR SERVICES, REMAINS WITH CUSTOMER. ADDITIONALLY, NEITHER EYEFINITY NOR ITS THIRD PARTY VENDORS WARRANT OR MAKE ANY REPRESENTATION REGARDING (A) THE USE OR THE RESULTS OF THE USE OF ITS PRODUCTS OR SERVICES, WEBSITES OR ANY THIRD PARTY PRODUCTS, SERVICES OR WEBSITES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE, OR (B) THE ACCURACY OF CODES, IMAGES, INFORMATION OR OTHER DATA PROVIDED BY THE PRODUCTS OR SERVICES. THE CLINICAL INFORMATION PROVIDED BY THE PRODUCTS OR SERVICES IS INTENDED AS A SUPPLEMENT TO, AND NOT A SUBSTITUTE FOR, THE KNOWLEDGE, SKILL AND JUDGMENT OF DOCTORS, OR OTHER HEALTHCARE PROFESSIONALS IN PATIENT CARE. THE ABSENCE OF A WARNING FOR A GIVEN DRUG OR DRUG COMBINATION OR OTHER TREATMENT SHOULD NOT BE CONSTRUED TO INDICATE THAT THE DRUG OR DRUG COMBINATION OR OTHER TREATMENT IS SAFE, APPROPRIATE OR EFFECTIVE IN ANY GIVEN PATIENT. EYEFINITY AND ITS THIRD PARTY VENDORS ARE NOT A HEALTH PLAN, HEALTH CARE PROVIDER OR PRESCRIBER. NEITHER EYEFINITY NOR ITS THIRD PARTY VENDORS GUARANTEE CONTINUOUS, ERROR-FREE, VIRUS-FREE OR SECURE OPERATION AND ACCESS TO THE PRODUCTS OR SERVICES, WEBSITES AND THE CONTENTS THEREOF, SERVICE ELEMENTS OR RELATED SOFTWARE. CUSTOMER ASSUMES THE ENTIRE RISK WITH RESPECT TO THE PERFORMANCE AND RESULTS IN CONNECTION WITH THE PRODUCTS AND SERVICES AND CUSTOMER'S USE OF THE PRODUCTS AND SERVICES IN CONNECTION WITH CUSTOMER'S HARDWARE. EYEFINITY AND ITS THIRD PARTY VENDORS SHALL NOT BE LIABLE FOR ANY DAMAGE CAUSED BY THE INTERACTION OF THE PRODUCTS OR SERVICES WITH ANY DEVICE OR ANY INFORMATION TECHNOLOGY INFRASTRUCTURE OF CUSTOMER.

## **5. MUTUAL INDEMNIFICATION**

**5.1 Indemnification by Eyefinity.** Eyefinity shall defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the use of the Products or Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "Claim Against Customer"), and shall indemnify Customer for any damages, attorney's fees and costs finally awarded against Customer as a result of, and for amounts paid by Customer under a court approved settlement of, a Claim Against Customer; provided that Customer (a) promptly provides Eyefinity with written notice of the Claim Against Customer, (b) gives Eyefinity sole control of the defense and settlement of the Claim Against Customer (provided that Eyefinity may not settle or defend any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) provides to Eyefinity all reasonable assistance, at Eyefinity's expense. Eyefinity's foregoing obligations do not apply with respect to Products or Services or portions or components thereof: (i) not supplied by Eyefinity; (ii) made in whole or in part in accordance with Customer's specifications; (iii) which are modified by Customer, if the alleged infringement relates to such modification; (iv) combined with other technology (hardware or software), processes or materials where the alleged infringement relates to such combination; or (v) where Customer continues the allegedly infringing activity after being notified thereof. In the event of a Claim Against Customer, or if Eyefinity reasonably believes the Products or Services may infringe or misappropriate, Eyefinity may in its discretion and at no cost to Customer (i) modify the Services so that they no longer infringe or misappropriate, without breaching Eyefinity's warranties under "Eyefinity Warranties" section above, (ii) obtain a license for Customer's continued use of the Products or Services in accordance with this Agreement, (iii) replace the Product or Service with non-infringing products or services which are substantially similar in functionality and performance, or (iii) terminate Customer's license of such Products or User subscriptions for such Services upon written notice, and refund Customer any prepaid fees covering the remainder of the term of such User subscriptions or Product license after the effective date of termination.

**5.2 Indemnification by Customer.** Customer shall defend Eyefinity and its Third Party Vendors (each, an "Eyefinity Indemnified Party") against any claim, demand, suit or proceeding made or brought against any Eyefinity Indemnified Party by a third party arising out of: (i) the use or operation of the Products or Services by Customer and/or the Users, including

without limitation, any non-authorized use of Customer's logins; (ii) a breach of this Agreement or any of the Schedules attached hereto by Customer of any of Customer's authorized Users; (iii) the accuracy, quality, integrity, legality, reliability or appropriateness of Customer data or any other content or data introduced to the Products or Services by any User; (iv) violation of any applicable law, rule or regulation by Customer or any of Customer's Users; (v) the diagnosis or treatment of any of User's patients and/or (vi) the negligent acts or willful misconduct of Customer or its personnel (individually or collectively, a "Claim Against Eyefinity"). Customer shall indemnify each Eyefinity Indemnified Party for any damages, attorney fees and costs finally awarded against such Eyefinity Indemnified Party as a result of, or for any amounts paid by such Eyefinity Indemnified Party under a court-approved settlement of, a Claim Against Eyefinity; provided that such Eyefinity Indemnified Party (a) promptly gives Customer written notice of the Claim Against Eyefinity, (b) gives Customer sole control of the defense and settlement of the Claim Against Eyefinity (provided that Customer may not settle or defend any Claim Against Eyefinity unless it unconditionally releases Eyefinity of all liability), and (c) provides to Customer all reasonable assistance, at Customer's expense.

**5.3 Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this section.

## **6. LIMITATION OF LIABILITY**

**6.1 Limitation of Liability.** EYEFINITY AND ITS THIRD PARTY VENDORS' LIABILITY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER HEREUNDER IN THE SIX (6) MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE CAUSE OF ACTION OR BASIS FOR LIABILITY AS APPLICABLE HEREUNDER.

**6.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EYEFINITY OR ITS THIRD PARTY VENDORS HAVE ANY LIABILITY TO CUSTOMER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT EYEFINITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

**6.3 Limitation of Action.** No action, regardless of form, arising out of this or any other Eyefinity Agreement or the transactions contemplated herein or therein, may be brought by Customer more than one (1) year after the cause of action has occurred.

## **7. GENERAL PROVISIONS**

**7.1 Surviving Provisions.** The sections titled "HIPAA Compliance," "Patient Communications," "Customer Acknowledgement," "Fees and Payment," "Proprietary Rights," "Confidentiality," "Warranties, Exclusive Remedies and Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Termination for Convenience by Eyefinity," "Termination for Convenience by Customer," "Return of Customer Data," "Surviving Provisions" and "General Provisions" shall survive any termination or expiration of this Agreement.

**7.2 Sole Responsibility.** Notwithstanding anything in this Agreement to the contrary, Customer agrees that the sole and exclusive responsibility for any decisions or actions with respect to a patient's care and for determining the accuracy, completeness or appropriateness of any billing, clinical, coding, diagnostic, medical or other information provided by the Products or Services resides solely with the individuals treating such patient. Eyefinity and its Representatives do not assume any responsibility for how such information is used. Customer acknowledges and agrees that the Products and Services do not "recommend," "suggest," or otherwise "advise" proper prescribing or other treatment decisions and that the responsibility for the treatment, and any associated decisions regarding billing for services, rests with the healthcare providers treating such patient and revolves around such healthcare provider's judgment and such healthcare provider's analysis of the patient's condition.

**7.3 Attorneys' Fees.** In the event litigation is required to force compliance with, or address any breach of this Agreement, the parties agree that the prevailing party shall be entitled to attorneys' fees and costs actually incurred.

**7.4 Assignment.** Customer is prohibited from assigning this Agreement to any other person or entity, without the prior written consent of Eyefinity. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**7.5 Use of Agents, Business Associates and Subcontractors.** Eyefinity may, in its discretion, delegate all or any portion of its obligation to perform services hereunder to an agent, Business Associate, or subcontractor.

**7.6 Force Majeure.** Eyefinity shall not be responsible for failure or delay of performance if caused by acts of God; civil disturbance; acts of the public enemy, war, riot, terrorism, or sabotage; earthquakes, fires, floods, explosions; failure of contractors and subcontractors to perform; strikes or labor disturbances; electrical, internet, or telecommunication outages that are not caused by Eyefinity; inability to obtain required material or transportation; acts of governmental authorities; or any other similar causes beyond the reasonable control of Eyefinity that make performance impossible. Eyefinity will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, Customer may cancel Product licenses or unperformed Services upon written notice.

**7.7 Relationship of the Parties.** It is agreed that the relationship of the parties is primarily that of licensee and licensor. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**7.8 Third Party Beneficiaries.** Modernizing Medicine, Inc., as well as the other Third Party Vendors of the Third Party Products listed in the Order Form, are third party providers of software and services to Eyefinity under this Agreement and are intended third party beneficiaries of this Agreement with the rights and power to enforce (i) all rights of Eyefinity against Customer with respect to the software and services supplied by such Third Party Vendor and (ii) all provisions of this Agreement applicable to such Third Party Vendor, including without limitation, the sections of this Agreement entitled "Mutual Indemnification" and "Limitation of Liability."

**7.9 Governing Law; Venue; Waiver of Jury Trial.** Any dispute arising out of or in connection with this Agreement shall be governed by the laws of the State of California without reference or regard to conflict of law principles. The state and federal courts located in Sacramento County, California, shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

**7.10 Notices.** Should Customer have any questions concerning this Agreement, or if Customer wishes to contact Eyefinity, Eyefinity's address is:

Eyefinity, Inc.  
10875 International Drive, Suite 200  
Rancho Cordova, California 95670

All notices, requests, demands and other communications made in connection with this Agreement shall be in writing and shall be delivered personally, or sent by certified mail, return receipt requested, or by Federal Express or similar overnight service, prepaid recorded delivery, and shall be deemed to have been duly given when so delivered personally, or, if mailed or sent by overnight courier, upon actual receipt or documented refusal of delivery. Notices to the parties shall be addressed to Eyefinity at the address set forth above and to Customer on the address set forth in the table at the top of this Agreement, or to such other address for a party as shall be hereafter specified by a like notice.

**7.11 Injunctive Relief.** Customer agrees that the provisions of this Agreement are necessary for the protection of Eyefinity's business and considers them to be reasonable for such purpose and that any breach of the provisions of this Agreement will cause Eyefinity substantial and irreparable injury and Eyefinity shall be entitled to seek injunctive relief from a court of proper jurisdiction in addition to all other available legal remedies.

**7.12 Dispute Resolution.** Any and all disputes, irrespective of legal theory, arising out of or related to this Agreement shall be settled by non-binding mediation, in lieu of a jury or court trial, before one (1) mediator mutually agreed upon by the parties, provided that no such dispute shall be submitted to mediation until the parties have used all reasonable efforts to reach satisfactory resolution and agreement among themselves. If non-binding mediation does not serve to resolve such dispute, the parties may then proceed with litigation in any court having proper jurisdiction.

**7.13 Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

**7.14 Severability.** Each provision of this Agreement shall be considered separable. To the extent that any provision of this Agreement is prohibited or ineffective under any applicable law, this Agreement shall be considered amended to the minimum extent possible in order to make such provision effective under such law (and, if such law is subsequently amended or interpreted in such manner as to make effective any provision of this Agreement that was formerly rendered invalid, such provision shall automatically be considered to be valid from the effective date of such amendment or interpretation).

**7.15 Entire Agreement.** This Agreement (including any schedule, exhibit or addendum hereto), which may be executed in counterpart and by facsimile or electronic signature, is intended by the parties as the complete and exclusive statement of the terms of their agreement and supersedes all prior agreements and understandings between the parties, whether written or oral, related to the subject matter. No modification, addition to, or waiver of any of the terms of this Agreement (including any schedule hereto) shall be effective unless in writing and signed by an authorized officer of Eyefinity and Customer. Other than the fees contained in the Order Form referenced in the “Fees” section of this Agreement, under no circumstances shall the terms of any purchase order submitted by Customer to Eyefinity, whether before or after the execution of this Agreement, be deemed binding upon Eyefinity.