



**Attachment 3**  
**Subscription Terms and Conditions for Vocera Care Experience Solutions**  
**Territory: United States and Canada**

**1. Definitions.**

Capitalized terms used herein shall have the same meaning given them in the Quote or other agreements to which Vocera has agreed in writing unless otherwise defined herein. In these Subscription Terms and Conditions, the following words and expressions have the following meanings:

**1.1 “Business Day”** refers to a day of the week other than Saturday, Sunday and any state or national holiday at either the Vocera headquarters or End User location.

**1.2 “Confidential Information”** shall have the meaning set forth in Section 9 below (Confidential Information).

**1.3 “Data”** means all electronic data or information submitted by End User or its Users to the Subscription Services

**1.4 “End User”** means the original user identified on the cover page of this Agreement, including any Facilities designated in Attachment 1.

**1.5 “Vocera Care Experience Solutions”** means the software and services provided by Vocera Care Experience, including the Good to Go subscription services and Care Transition software and subscription services, as more specifically identified in End User’s Purchase Orders submitted to Vocera under this Agreement.

**1.6 “Intellectual Property Rights”** means all legally cognizable rights with regard to patent laws, copyright laws, trademark laws, trade secret laws, and similar laws with respect to intellectual property throughout the world.

**1.7 “License Key”** means the User login and password credentials provided to End User by Vocera upon implementation of the Subscription Services at the applicable Facility which enables End User to use the Subscription Services.

**1.8 “Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**1.9 “Price”** means the price of Services set forth in the applicable Quote.

**1.10 “Product Documentation”** means the specific materials applicable to the Services listed under “Product Documentation” at <https://pubs.vocera.com/docportal/index.html>.

**1.11 “Purchase Order”** means End User’s purchase order for Services specified in a Quote issued by Vocera.

**1.12 “Quote”** means an outstanding firm written quotation or price list specifying the Services to be provided by Vocera to End User.

**1.13 “Service”** means a service offered by Vocera, including, but not limited to, the Subscription Services (as defined below), professional services, education, training and technical support (described in the applicable Support Terms defined below) and referred to in a Quote.

**1.14 “Subscription Services”** means the services made available by Vocera, including associated offline components, as described in the Product Documentation.

**1.15 “Subscription Term”** means the finite time period during which a Subscription Service is provided as specified in the Quote.

**1.16 “Support Terms”** means the Support for Vocera Ease and Care Experience Solutions policy which is posted at <https://www.stryker.com/us/en/acute-care/vocera/legal/ease-and-care-experience-legal-documents.html> and attached to this Agreement as Attachment 4.

**1.17 “USD”** means United States Dollars.

**1.18 “Users”** means individuals who are authorized by End User to use the Subscription Services, for whom subscriptions to the Subscription Service have been ordered, and who have been supplied user identifications and



passwords by End User (or by Vocera at End User's request). Users may include but are not limited to End User's employees, consultants, contractors and agents, Patients, Designated Persons and other third parties with which End User transacts business.

**1.19 "Vocera Ease Solutions"** means the Vocera Ease application and related software and services provided by Vocera, as more specifically identified in End User's Purchase Orders submitted to Vocera under this Agreement.

**1.20 "Vocera Ease Communications"** means the text messages, photos, videos and other communications concerning a Patient's medical procedure, status, condition or update which End User or a User transmits to a Designated Person during a Vocera Ease Encounter.

**1.21 "Ease Encounter"** means a medical procedure, status update, condition update or any other update during which the End User utilizes the Vocera Ease Solutions to send communications to a Designated Person or other third party.

**1.22 "Patient"** means a medical patient undergoing a medical procedure or stay at a facility operated by End User who has signed a written consent or for whom a parent, legal representative, authorized healthcare surrogate, attorney-in-fact, guardian or other legal caretaker has signed a written consent on his or her behalf, authorizing End User to utilize the Vocera Ease Solutions to send Vocera Ease Communications during the Patient's medical procedure and pertaining to such Patient's medical procedure to one or more Designated Persons.

**1.23 "Designated Person"** means those persons designated by a Patient or by such Patient's parent, legal representative, authorized healthcare surrogate, attorney-in-fact, guardian or other legal caretaker who has signed a written consent on his or her behalf, as applicable, to receive Vocera Ease Communications in a consent form signed by the Patient.

## **2. Ordering.**

**2.1 Firm Purchase Orders.** All Purchase Orders are firm and non-cancelable upon issuance by End User. End User may not cancel any Purchase Order or portion thereof after issuance unless Vocera has failed timely to notify End User of acceptance in accordance with Section 2.2 below. In the event End User issues a Purchase Order after a Quote Expiration Date and Vocera subsequently accepts such Purchase Order, then such acceptance by Vocera shall automatically be treated as extending the Quote Expiration Date to the date of acceptance.

**2.2 Purchase Order Acceptance.** No Purchase Order or change in Purchase Order shall be binding upon Vocera unless and until accepted by Vocera by written notice to End User or until Vocera activates the Services specified on the Purchase Order. Vocera will notify End User within five Business Days of Vocera's receipt of a Purchase Order or requested change in a Purchase Order of: (a) Vocera's acceptance or rejection thereof; and (b) the date estimated by Vocera for activation of the Services ordered. Any Purchase Order not affirmatively accepted or rejected by Vocera as set forth above will be deemed rejected.

**2.3 Delinquency in Payment.** Notwithstanding written acceptance of a Purchase Order for Services, Vocera shall not be obligated perform Services where any payment owing to Vocera is overdue by 30 days or more.

**3. Provision of Subscription Services.** Vocera shall make the Subscription Services available to End User's Users solely for use related to End User's internal business purposes pursuant to this Agreement and the relevant accepted Purchase Orders during the applicable Subscription Term. Unless otherwise specified in the applicable Quote, Subscription Services are purchased based on the number of licensed hospital beds End User has at its Facilities ("Licensed Beds") or licensed hospital rooms. End User agrees to notify Vocera if the number of Licensed Beds increases during the Subscription Term. If the number of Licensed Beds increases during the Subscription Term, End User agrees to promptly submit a Purchase Order for additional subscriptions to be added during the applicable Subscription Term. Such additional subscriptions shall be at the same pricing as the pre-existing subscriptions thereunder, prorated for the remainder of the Subscription Term in effect at the time the additional subscriptions are added, and the added subscriptions shall terminate on the same date as the pre-existing Subscription Term.

## **4. Use of the Subscription Services.**

**4.1 Vocera's Responsibilities.** Vocera shall: (i) provide support for the Subscription Services to End User as further described in the Support Terms applicable to the Subscription Services at no additional charge; (ii) make the



Subscription Services available as described in the Support Terms; and (iii) provide the Subscription Services only in accordance with applicable laws and government regulations.

**4.2. Protection of End User's Data.** Vocera shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of End User's Data. Vocera shall not (a) modify End User's Data; (b) disclose End User's Data except as compelled by law in accordance with Section 9.3 or as expressly permitted in writing by End User; or (c) access End User's Data except to provide the Subscription Services and prevent or address service or technical problems, or at End User's request in connection with customer support matters.

#### **4.3. End User's Responsibilities.**

**4.3.1. End User's Facilities and Users.** End User shall be responsible for providing the required environment for the Subscription Services, including, without limitation, preparation of any mobile devices and provision of Wi-Fi access and/or data plan coverage at End User's facilities. End User shall be responsible for downloading and installing the Subscription Services on a secure mobile device and configuring mobile devices as may be necessary. End User shall monitor all Users utilizing the Subscription Services to ensure continuous compliance with these terms and any training provided to End User by Vocera. End User shall be solely responsible for its User's failure to comply with these terms, training provided by Vocera, or any applicable state and federal laws.

**4.3.2. End User's Warranties.** End User warrants that it (i) has validly entered into this Agreement and has the legal power to do so and (ii) will not intentionally upload a file containing Malicious Code into the Subscription Services or other intentionally breach End User's responsibilities set forth herein. End User shall (i) be responsible for the accuracy, quality and legality of End User's Data and of the means by which End User and its Users acquired the Data; (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Services, and notify Vocera promptly of any such unauthorized access or use; and (iii) use the Subscription Services only in accordance with the applicable Product Documentation and applicable laws and government regulations. End User shall not (a) sell, resell, rent or lease the Subscription Services; (b) use the Subscription 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; (c) use the Subscription Services to store or transmit Malicious Code; (d) interfere with or disrupt the integrity or performance of the Subscription Services or third-party data contained therein or the servers or networks connected to the Subscription Services; (e) attempt to gain unauthorized access to the Subscription Services or their related systems or networks; or (f) circumvent any technological measure provided from time to time to control access to or limit use of the Subscription Services. ***Violation of any of the foregoing is a material breach hereof***

**4.3.3. Patient Consent.** End User must obtain express consent of each patient prior to Users engaging in an Vocera Ease Communication. End User's failure to obtain the written consent of any patient shall void End User's subscription, without refund.

## **5. Warranties and Disclaimers.**

**5.1. Vocera's Warranties.** Vocera warrants that:

- (i) Vocera has validly entered into this Agreement and has the legal power to do so;
- (ii) Vocera shall provide the Subscription Service to End User substantially in accordance with the Product Documentation and the service level commitments set forth in the Support Terms;
- (iii) the functionality of the Subscription Services will not be materially decreased during a Subscription Term;
- (iv) Vocera warrants that it will perform the Services in a timely, diligent, professional, and workmanlike manner by competent professionals who possess the proper degree of skill, care, training and experience consistent with industry standards; and



- (v) Vocera will not transmit Malicious Code to End User, provided, it is not a breach of this subpart (v) if End User is the original source of a file containing Malicious Code.

End User must provide written notice to Vocera of any breach of the foregoing warranties no later than 30 days after End User becomes aware of such breach, or the right to assert such claim will be deemed waived. For any breach of a warranty above, End User's sole and exclusive remedies shall be the limited remedies set forth in the Support Terms or as provided in Section 7.3 (Termination by End User for Cause).

**5.2 Warranty Exclusions.** Vocera makes no warranty and accepts no responsibility for failures in Services due to: (a) deficiencies in or the late delivery of information or material required from End User; (b) non-conformities of End User systems to specifications in the Product Documentation or an applicable Vocera engagement letter for professional services; (c) the inaccessibility or insufficient accessibility of End User systems or third party systems required by End User; (d) End User's failure to perform its responsibilities as required under the Support Terms and Vocera's published policies applicable to the Services; or (e) the lack of reasonable cooperation on End User's part as required under these Subscription Terms and Conditions and Vocera's published policies applicable to the Services.

**5.3 Changes to Subscription Services.** Subject to the foregoing warranties, Vocera shall have the right, in its absolute discretion, without liability to End User, to update to provide new functionality or otherwise change the design of any Subscription Service or to discontinue any Subscription Service; provided, however, End User agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Vocera regarding future functionality or features. Releases by Vocera of additional applications or increases of functionality may be deemed by Vocera, at its sole discretion, to constitute a new module. Modules, if any, are not included with this purchase. Modules may be offered by Vocera at a later date and for such fee established solely by Vocera.

**5.4 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL EXPRESS, IMPLIED OR STATUTORY TERMS, CONDITIONS, REPRESENTATIONS, AND WARRANTIES (INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE) TO THE EXTENT ALLOWED BY APPLICABLE LAW.

## **6. Prices and Payment.**

**6.1 Fees.** End User shall pay the applicable Price for the Services as specified in the applicable Quote and accepted Purchase Order hereunder. Except as otherwise specified herein or in an Order Form, (i) Prices are based on Services purchased and not actual usage by Users, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of subscriptions purchased cannot be decreased during the relevant Subscription Term stated on the applicable Purchase Order. Prices for Subscription Services are based on monthly periods that begin on the Subscription Term start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the Subscription Term.

**6.2. Invoicing and Payment.** Payment for Subscription and Services shall be due net thirty (30) days from the date of invoice, which shall be (i) on or subsequent to the start date of each Subscription Term set forth in the Quote; (ii) the anniversary date for renewal Subscription Terms. All payments for Subscription Services shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Quote. End User is responsible for providing complete and accurate billing and contact information to Vocera and notifying Vocera of any changes to such information.

**6.3. Overdue Charges.** If any charges are not received from End User by the due date, then at Vocera's discretion, (a) such charges may accrue late interest at the rate of twelve percent (12%) per year, compounded monthly of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) Vocera may condition future subscription renewals and on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).



**6.5. Taxes.** The Prices do not include sales, use, excise, withholding or other taxes, tariffs and duties. End User shall pay, or reimburse Vocera for any present or future sales, use, excise, withholding or other taxes, tariffs and duties applicable to the sale or furnishing of any Services (“Taxes”). In lieu of a specific tax, End User may provide Vocera with a tax exemption certificate acceptable to the applicable taxing authority. If Vocera has the legal obligation to pay or collect Taxes for which End User is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by End User, unless End User provides Vocera with a tax exemption certificate acceptable to the applicable taxing authority.

## **7. Term and Termination.**

**7.1 Initial and Renewal Subscription Terms.** The initial Subscription Term shall begin on the the issuance date of the applicable Purchase Order or other written acceptance of Vocera’s Quote and shall continue for the Subscription Term length set forth in Vocera’s initial Quote. At the conclusion of each new or renewal Subscription Term, the Subscription Term will automatically be extended for an additional, consecutive twelve (12) months unless, prior to the end of such term, either (i) Vocera issues a Quote for an extended Subscription Term and End User issues and Vocera accepts a corresponding Purchase Order or (ii) either party provides written notice of non-renewal to the other. If a new Quote is issued by Vocera, the new pricing shall be effective upon renewal and thereafter. Where the Subscription Term is extended, but no new Quote is provided by Vocera, the pricing set forth in the original Quote will continue to apply. Any initial, renewal or modified Subscription Term will take effect upon issuance by End User and acceptance by Vocera of a corresponding Purchase Order.

**7.2 Termination by Vocera for Cause.** Vocera may, at its option, terminate this Agreement and corresponding Subscription Services, disable End User’s use of the Subscription Services, and accelerate the amounts due to Vocera if: (a) End User fails to pay Vocera any monies due and payable to Vocera within thirty (30) days after written notice of non-payment from Vocera; or (b) End User fails to cure any material breach of its obligations under this Agreement within thirty (30) days after Vocera provides written notice setting forth the alleged default; or (c) End User breaches any term of any other agreement between End User and Vocera and does not cure the breach within applicable cure periods, if any.

**7.3 Termination by End User for Cause.** If End User claims that Vocera has materially defaulted in the performance of the duties and obligations of Vocera as expressly set forth herein, End User shall provide written notice specifically setting forth the alleged default(s) and Vocera shall have thirty (30) days within which to cure such default. End User’s sole and exclusive remedy, for any breach of this Agreement by Vocera, shall be to (i) terminate this Agreement, including any current Subscription Services and (ii) receive a pro-rated refund from Vocera for any prepaid fees covering the remainder of the Subscription Term after the effective date of termination. In no event shall any termination relieve End User of the obligation to pay any fees payable to Vocera for Services provided during the period prior to the effective date of termination.

**7.5 Effect of Termination.** Upon termination of this Agreement for any reason (a) End User shall immediately discontinue all use of the Subscription Services, (b) the provisions of this Agreement pertaining to the confidentiality, non-use and nondisclosure of Confidential Information (as defined below) in Section 9 and Sections 5.4, 7.6, 8, 10.3, 11 and 12 shall survive, and (c) within ten (10) days of termination, End User shall return to Vocera all copies of the corresponding Product Documentation or other materials related to the Vocera Ease and Care Experience Solutions. Except as expressly provided hereunder, Vocera shall not be obligated to refund any fees previously paid under this Agreement

**7.6 Return and Disposal of End User Data.** Upon request by End User made within 30 days after the effective date of termination of a Subscription Services, Vocera will make available to End User for download a file of any remaining End User’s Data in comma separated value (.csv) format or such other format as mutually agreed to by the parties. After such 30 day period, Vocera shall have no obligation to maintain or provide any remaining End User Data and may thereafter, unless legally prohibited, delete all of End User Data in Vocera’s systems or otherwise in Vocera’s possession or under Vocera’s control. For Vocera Ease Solutions, unless otherwise agreed, Vocera shall not be obligated to store or maintain copies of the Vocera Ease Communications, including without waiver, all PHI which may or may not exist therein. All Vocera Ease Communications shall be deleted from Vocera’s servers and systems on a regular nightly basis. Vocera shall bear no responsibility or liability for storing or maintaining Vocera Ease Communications prior to deletion. End User shall indemnify, defend and hold Vocera harmless from any and all liability associated with the Vocera Ease Communications not being stored/maintained for future reference or use.

## 8. Proprietary Rights.

**8.1. Reservation of Rights in Subscription Services.** Subject to the limited rights expressly granted hereunder, Vocera and its licensors reserve all rights, title and interest in and to the Subscription Services, including all related Intellectual Property Rights. No rights are granted to End User hereunder other than as expressly set forth herein.

**8.2. Restrictions.** End User shall not (i) permit any third party to access the Subscription Services except as permitted herein, (ii) create derivative works based on the Subscription Services except as authorized herein, (iii) reverse engineer the Subscription Services, or (iv) access the Subscription Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Subscription Services.

**8.3 Survey and End User Data.** Each patient and designated user who has used the “recipient” version of the Vocera Ease Solution shall have the opportunity to take a survey regarding their experience. End User agrees that all responses to such surveys and other feedback regarding Vocera Ease Solutions, regardless of the source, shall be deemed Confidential Information owned exclusively by Vocera. Notwithstanding the foregoing, Vocera acknowledges and agrees that Vocera Ease Solutions are intended to increase End User’s Patient and customer satisfaction. To this end, Vocera will share with End User, at reasonable intervals and in CSV file format, survey responses to questions that are presented to solicit the satisfaction levels of End User’s Patients and Designated Persons with respect to their use and experiences with Vocera Ease Solutions. Subject to the limited rights granted by End User hereunder, Vocera acquire no right, title or interest from End User or End User’s licensors under this Agreement in or to End User Data, including any Intellectual Property Rights therein.

**8.4 U.S. Government Users.** The Subscription Services and underlying software is a “commercial item” consisting of “commercial computer software” and the Product Documentation is a “commercial item” consisting of “commercial computer software documentation,” as such terms are used in 48 C.F.R. 2.101 and 48 C.F.R. 12.212. Under 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 to 227.7202-4, U.S. Government Users rights to the Subscription Services and Product Documentation only with the rights set forth therein.

**8.5 Suggestions.** Vocera shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Subscription Services any suggestions, enhancement requests, recommendations or other feedback provided by End User, including Users, relating to the operation of the Subscription Services.

**8.6 Third Party Software.** Certain modules or technology used or provided by Vocera in connection with the Subscription Services are provided by Vocera’s direct or indirect licensors (“Licensors”) and are subject to the provisions set forth under the heading “Third Party Software” at <https://www.stryker.com/us/en/acute-care/vocera/legal.html> which are incorporated herein by reference. End User’s use of the Subscription Services confirms End User’s consent to such provisions which are intended for the express benefit of the corresponding Licensors who are third-party beneficiaries of, and entitled to enforce, such provisions. Updates to the Subscription Services are effective immediately upon use.

## 9. Confidential Information.

**9.1 Definition.** “Confidential Information” of one party (the “Disclosing Party”) means any and all technical, financial, and business information of the Disclosing Party or of a third party to whom the Disclosing Party has an obligation of confidentiality, whether disclosed to the other party (the “Receiving Party”) before or after the Effective Date and whether disclosed in writing, orally, or by electronic delivery, including without limitation any information relating to the Disclosing Party’s or such third party’s techniques, algorithms, know-how, current, future and proposed products and services, suppliers, research, engineering, designs, financial information, procurement requirements, purchasing, manufacturing, customer and End User lists, business forecasts, sales and merchandising, and marketing plans. Notwithstanding the foregoing, Confidential Information includes only that information that: (i) if delivered in writing or electronically, is designated conspicuously as “Confidential” or the like; (ii) if delivered otherwise, is identified as confidential at the time of first disclosure and is summarized in a writing sent by the Disclosing Party to the Receiving Party within 30 Business Days of any such disclosure; or (iii) is required under applicable law to be treated as confidential.

**9.2 Obligations.** The Receiving Party will maintain in confidence all Confidential Information of the Disclosing Party and will not use such Confidential Information except as expressly permitted herein. The Receiving Party will take



all reasonable measures to maintain the confidentiality of such Confidential Information, but not less than the measures it uses for its confidential information of similar importance. The Receiving Party will limit the disclosure of Confidential Information of the Disclosing Party to those of its employees and contractors with a bona fide need to access such Confidential Information for the Receiving Party's exercise of its rights and obligations under the End User Agreement; provided that all such employees and contractors are under a duty to maintain the confidentiality of information disclosed hereunder. The Receiving Party hereby guarantees the performance of the provisions hereof by each person obtaining Confidential Information directly or indirectly from such Receiving Party. The Receiving Party will promptly give notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information of which the Receiving Party becomes aware and will assist the Disclosing Party in remedying such unauthorized use or disclosure. The obligations set forth in this paragraph shall survive for a period of three years after the longer of expiration or termination of the End User Agreement, if applicable, or the Quote Expiration Date.

**9.3 Exclusions.** The foregoing obligations on use and disclosure will not apply to any specific Confidential Information that (i) is or becomes generally known to the public through no act or omission of the Receiving Party; (ii) the Receiving Party can demonstrate by written evidence was rightfully in the Receiving Party's possession at the time of disclosure, without an obligation of confidentiality; (iii) the Receiving Party can demonstrate by written evidence was independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information; or (iv) the Receiving Party rightfully obtains from a third party not under a duty of confidentiality and without restriction on use or disclosure. Notwithstanding the obligations on use and disclosure set forth above, the Receiving Party may disclose the Disclosing Party's Confidential Information to the extent required by law, regulation, or court order, provided, however, that the Receiving Party notifies the Disclosing Party promptly after becoming aware of its obligation to make such disclosure and permits the other party to seek a protective order or otherwise to challenge or limit such required disclosure.

**9.4 Protected Health Information.** This Section applies only if End User is regulated under state and federal laws regarding individually identifiable health information ("Protected Health Information" or "PHI") including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and rules and regulations adopted in connection therewith. Vocera acknowledges that End User may be subject to various state and federal laws regarding the confidentiality and security of PHI, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) commonly known as HIPAA as well as the rules and regulations adopted and to be adopted in connection therewith. If in the course of performing its obligations under this Agreement, Vocera obtains or has access to PHI, Vocera agrees that any PHI received by it shall be held strictly confidential, and shall not be used by Vocera or disclosed by Vocera except as specifically provided in a separate writing or as permitted by law. The Parties further agree that no PHI shall be transmitted, stored, maintained, or collected ("Shared") except with the Patient's express written consent (which End User is responsible for obtaining) and only for the purpose and to the extent for which the Patient has provided consent. All Shared PHI shall be done in strict compliance with HIPAA, this Agreement, the BAA, and applicable privacy standards and law. If End User is deemed a "Covered Entity" and Vocera is deemed a "Business Associate" under applicable law, the parties shall be subject to the Business Associate Agreement which is mutually agreed to in writing by the parties. The Services and other Vocera products are communication tools only and not a substitute for professional healthcare. Vocera is not a provider of healthcare services. End User and its employees and agents remain responsible for timely, accurate and complete communications related to healthcare and are solely responsible for the timeliness and quality of healthcare and services provided by End User and its agents.

**9.5 Return of Information.** Except as provided in Section 7.6, upon the expiration or termination of this Agreement, the Receiving Party shall, upon request from the Disclosing Party: (i) return to the Disclosing Party all documents, samples, tapes, magnetic disks, CDs, and other tangible items containing or representing the Disclosing Party's Confidential Information and all copies thereof in whatever form; (ii) erase or destroy all of Disclosing Party's Confidential Information contained in computer memory or data storage apparatus; and (iii) certify to the Disclosing Party in writing signed by a duly-authorized officer of the Receiving Party that the Receiving Party has complied with the terms of this Section.

## **10. Defense of Certain Claims.**

**10.1 Defense of Claims Against End User.** Vocera will, at its own expense, defend End User from or settle any third party claim, suit or proceeding brought against End User to the extent it is based upon a claim that End User's use of the Subscription Service when used as contemplated by the Product Documentation infringes upon any patent,



trademark or any copyright or misappropriates any trade secrets of any third party alleged to be valid in the United States (collectively "IP Right"). Vocera will indemnify and hold End User harmless from all amounts (i) awarded by a court of competent jurisdiction in such matter (including damages, costs and fees) or (ii) agreed in a settlement to which Vocera has assented in writing. The foregoing is contingent on End User providing Vocera prompt written notice of any such claim or action and giving Vocera full information and assistance in connection with defending and/or settling such claim, at Vocera's sole expense. Vocera shall have the sole right to control the defense of any such claim or action and the sole right to settle or compromise any such claim or action. If the Subscription Service is, or in Vocera's opinion might be, held to infringe or misappropriate as set forth above, Vocera may, in addition to its aforementioned obligations and at its sole option and expense, replace or modify the Subscription Service so as to avoid infringement or misappropriation, or procure the right for End User to continue the use of such the Subscription Service. If neither of such alternatives is, in Vocera's opinion, commercially reasonable, at Vocera's request, the Subscription Service will be terminated and Vocera's sole and exclusive liability, in addition to its obligation to reimburse awarded damages, costs and expenses as set forth above, shall be to refund a pro-rated portion of amounts paid attributable to the remainder of the current Subscription Term. If the "Territory" is not otherwise defined in an agreement between the parties, "Territory" shall mean the country where the primary use of the Subscription Services occurs.

**10.2 Limitations.** The foregoing obligations of Vocera will not apply to the extent that any claim arises out of: (i) the use of the Subscription Service in combination with data, goods or services not provided by Vocera where such infringement arises from the combination and where the Subscription Services could have been used, in the manner contemplated by its applicable Product Documentation, in a manner not giving rise to such infringement, or (ii) use of the Subscription Service in breach of Section 4.3 above, in each case to the extent that infringement or misappropriation otherwise would have been avoided. As to claims described in clauses (i) and (ii), End User makes the same undertaking to Vocera as Vocera's makes to End User in Section 10.1 above, *mutatis mutandis*.

**10.3 ENTIRE LIABILITY.** TO THE FULL EXTENT PERMITTED BY LAW, VOCERA'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS PROVISION SHALL BE A SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS REGARDING THE ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS AND ANY IMPLIED OR STATUTORY TERMS, CONDITIONS, REPRESENTATIONS, AND WARRANTIES OF NON-INFRINGEMENT.

**10.4 Defense of Claims Against Vocera.** End User, at its own expense, will defend Vocera and its affiliates from or settle any third party claim, suit or proceeding brought against Vocera to the extent it is based upon: (a) End User's and its agents' and affiliates' (collectively, "End User Group") use of the Subscription Services in a manner that does not conform with this Agreement, including but not limited to the sending of content that may be deemed offensive or inappropriate; (b) the negligence or willful misconduct of End User Group; (c) any infringement of a third party's intellectual property rights resulting solely and exclusively from End User's use of the Subscription Services in combination with any software or mobile device owned by End User Group; (d) any text messages, photos, videos or other communications sent by End User Group to a third party through the Subscription Services; (e) any communications sent by End User Group to any recipient other than a person designated by a patient; (f) End User's decision not to store or maintain Vocera Ease Communications for future reference or use; (g) End User's failure to obtain consent from a patient in advance of sending any Vocera Ease Communications; and (h) any Claim relating to, or arising from, any HIPAA violation committed by End User Group or breach of the Business Associate Agreement by End User. End User will indemnify and hold Vocera harmless from all amounts (i) awarded by a court of competent jurisdiction in such matter (including damages, costs and fees) or (ii) agreed in a settlement to which End User has assented in writing. The foregoing is contingent on Vocera providing End User prompt written notice of any such claim or action and giving End User full information and assistance in connection with defending and/or settling such claim, at End User's sole expense. End User shall have the sole right to control the defense of any such claim or action and the sole right to settle or compromise any such claim or action.

## **11. Damages Exclusions and Limitations.**

**WITHOUT PREJUDICE TO ANY OF THE FOREGOING, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, VOCERA'S LICENSORS (AS DEFINED IN THE APPLICABLE**





**EULA) DISCLAIM ALL LIABILITY TO END USER FOR DAMAGES OF ANY KIND AND VOCERA WILL NOT BE LIABLE FOR:**

- (A) LOST PROFITS, LOST REVENUE, LOST INTEREST, LOST GOODWILL, LOSS OR CORRUPTION OF DATA OR FOR ANY LOSS OF OR INTERRUPTION TO BUSINESS;
- (B) COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES;
- (C) SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO TRANSACTIONS UNDER THIS AGREEMENT (I) HOWEVER CAUSED OR ALLEGED TO BE CAUSED, (II) EVEN IF VOCERA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (III) WHETHER GROUNDED IN WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, BREACH OF CONTRACT, CIVIL LIABILITY OR OTHER CAUSE OF ACTION OR CLAIM UNDER OR IN CONNECTION HEREWITH OR THE SUBJECT MATTER HEREOF, AND (IV) REGARDLESS OF WHETHER MADE IN THE FORM OF AN ALLEGATION, DEMAND, SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND (COLLECTIVELY, “CLAIM”); OR
- (D) ANY AMOUNT EXCEEDING THE “LIABILITY LIMIT” (AS DEFINED BELOW).

**THE “LIABILITY LIMIT” IS THE AMOUNT ACTUALLY PAID BY END USER FOR THE SPECIFIC SERVICES SUBJECT TO THE CLAIM WITHIN THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE CLAIM.**

**IF ANY PART OF THIS SECTION 11 IS FOUND TO BE UNENFORCEABLE BY ANY COURT OR COMPETENT AUTHORITY OR WOULD BE FOUND TO BE UNENFORCEABLE IF IT WERE INTERPRETED OR CONSTRUED IN A PARTICULAR WAY, THEN, THE RELEVANT WORDING SHOULD BE INTERPRETED OR CONSTRUED SO AS TO AVOID SUCH A FINDING AND THAT, IN THE EVENT OF SUCH A FINDING, THE REMAINDER OF THE PROVISION IN QUESTION SHALL BE INTERPRETED OR CONSTRUED TO GIVE IT FULL EFFECT.**

**12. General.**

**12.1 Notices.** Any notice required to be given hereunder shall be in writing and shall be given by facsimile or email (confirmed by regular mail), personal delivery (including by professional courier), or mailing (by first class prepaid mail, return receipt requested). Notices to Vocera shall be sent as follows:

|  |  |
|--|--|
| <b>Notices to Vocera Accounts Receivable:</b>  |  |
| Address:   | Vocera Communications, Inc.  |
|  | 3030 Orchard Parkway   |
|  | San Jose, CA 95134   |
| Attention:   | Accounts Receivable  |
| Telephone:   | 408-882-5100   |
| E-mail:  | <a href="mailto:crfcar_billing_vcr@stryker.com">crfcar_billing_vcr@stryker.com</a> |
| <b>Other Notices to Vocera:</b>  |  |
| Address:   | Vocera Communications, Inc.  |
|  | 3030 Orchard Parkway   |
|  | San Jose, CA 95134   |
| Attention:   | Law Department   |
| Telephone:   | 408-882-5100   |
| E-mail:  | <a href="mailto:LawDepartment@vocera.com">LawDepartment@vocera.com</a>             |
| <b>Payments (unless otherwise agreed in writing) should be made by one of the following methods:</b> |  |
| <b>Checks:</b>   |  |
| Address:   | Vocera Communications, Inc.  |
|  | 3030 Orchard Parkway   |
|  | San Jose, CA 95134   |
| Attention:   | Accounts Receivable  |
| <b>Domestic Wire Transfer:</b>   |  |
| To:  | US BANK N.A.   |
| Routing & Transit #:   | 121122676  |



|                                    |   |
|------------------------------------|---|
| For Credit Of:                     | Vocera Communications, Inc.                                       |
| Credit Account #:                  | 153497052594  |
| By Order Of:                       | <i>Reference End User name, invoice number(s) or PO number(s)</i> |
| <b>International Wire Transfer</b> |   |
| Pay To:                            | US BANK N.A.  |
| Swift Code:                        | USBKUS44IMT   |
| For Credit Of:                     | Vocera Communications, Inc.                                       |
| Final Credit Account #:            | 153497052594  |
| By Order Of:                       | <i>Reference invoice number(s) or PO number(s)</i>                |

Notices to End User shall be sent to any address specified in Attachment 1 of this Agreement. In the case of personal delivery, notice shall be deemed to have been given upon actual receipt. In the case of email or facsimile, notice shall be deemed to have been given upon the date the transmitting machine confirms such transmission. In the case of mailing, such notice shall be deemed to have been given seven Business Days after such mailing.

**12.2 Relationship of Parties.** Nothing in the End User Agreement or any other document or agreement between the parties shall constitute or be deemed to constitute a partnership between the parties. The relationship between the parties shall be that of seller and buyer, respectively.

**12.3 Assignment.** The Agreement is personal to the parties, and neither party may assign or otherwise transfer any of its rights or obligations hereunder, whether voluntarily or otherwise, without the prior written consent of the other; provided, however, that either party may assign in connection with an acquisition of all or substantially all of the assets or equity of such party by a third party. Any other attempted assignment or transfer without such consent shall be null and void. Subject to the foregoing, the Agreement will inure to the benefit of and be binding upon the permitted successors and assigns of the parties.

**12.4 No Other Agreements.** All previous agreements and arrangements (if any) made by Vocera and End User and relating to the subject matter hereof are hereby superseded. This Agreement, including all attachments and incorporated policies, embodies the entire understanding of the parties with respect thereto. This Agreement may only be amended by a writing signed by the parties. The foregoing does not limit Vocera’s rights to provide, establish, post, publish, or amend Product Documentation, materials, and policies subject to the express limitations in this Agreement.

**12.5 Waiver.** No waiver or amendment of any provision hereof shall be valid unless in writing. Any waiver shall only be applicable to the specific incident and occurrence waived. The failure of either party to insist upon strict performance, or to exercise any rights hereunder, shall not act as a waiver.

**12.6 Force Majeure.** Neither party shall be liable for any failure to perform any of its obligations hereunder (other than the payment of money) which results from an act of God, the elements, fire, flood, component shortages, terrorism, riot, insurrection, industrial dispute, accident, war, embargoes, restrictions imposed by statute, governmental regulation or the order of a court of competent jurisdiction, or any other cause beyond the reasonable control of the party.

**12.7 Interpretation.** Headings in any portion of this Agreement are for convenience only and will not in any way define or affect the meaning, construction, or scope of the provisions hereof. If any provision of this Agreement is deemed to be invalid, illegal or unenforceable, such determination shall not impair or affect the validity of the remaining provisions.

**12.8 Attorneys’ Fees.** In any litigation, arbitration or court proceeding between the parties with respect to the Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, attorneys’ fees and all costs of proceedings incurred in enforcing the Agreement.

**12.9 Compliance with Laws.** Each party shall carry out its activities under the Agreement in full compliance with all applicable laws, including, without limitation, the U.S. Export Administration Act of 1979, as amended, the Export Administration Regulations thereunder, and the export laws and regulations of other jurisdictions as applicable. The United Nations Convention on the International Sale of Goods, and any local implementing legislation shall not apply to the Agreement.



**12.10 Counterparts.** If an Agreement is executed in counterparts, the counterparts when executed and delivered, shall each be deemed an original and taken together shall constitute one and the same instrument.

**12.11 Conflict.** The terms of this Agreement shall prevail in the event of a conflict with any otherwise applicable law for the protection of proprietary rights. Any different or additional term preprinted on any End User Purchase Order or similar document are hereby rejected, notwithstanding any term set forth therein to the contrary.

**12.12 Insurance.** Vocera shall maintain the following insurance coverage during the term of the Agreement: (i) commercial general liability coverage, including coverage for products and completed operations liability, with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate; (ii) commercial automobile liability insurance with combined single limits of \$1,000,000 per accident for owned, hired, and non-owned vehicles; and (iii) worker's compensation insurance covering all employees as required by applicable law and employer's liability insurance subject to limits of \$1,000,000 per accident and \$1,000,000 per employee and policy limit for disease. At Customer's written request, certificates of insurance shall be provided by Vocera. To the extent permitted by applicable laws and regulations, Vocera shall be permitted self-insure to comply with these requirements.

**12.13 Screening of Certain Personnel.**

(a) Vocera obtains pre-employment background screening reports as a condition of employment. All pre-employment inquiries are limited to information that affects job performance and the workplace. Screening is conducted in accordance with applicable federal and state laws including the Fair Credit Reporting Act (FCRA). The screenings are by an outside agency. The screening report includes information concerning driving record, education records, and civil/criminal court records (over the last seven years).

(b) All employees that are expected to provide professional services at the End User site are required to take a standard drug urine test designed to detect casual drug use that occurred within the past 72 hours. Testing is performed at Substance Abuse and Mental Health Services Administration (SAMHSA)-certified laboratories. The drug test is a ten panel test that includes and supplements the federally mandated (SAMHSA/DOT) five-drug panel. The ten panel screens for the presence of the following drugs and drug classes: amphetamines (amphetamine and methamphetamine), barbiturates (amobarbital, butalbital, pentobarbital, phenobarbital, and secobarbital), benzodiazepines, cocaine metabolite, marijuana metabolites, methadone, methaqualone, opiates (codeine and morphine), phencyclidine, and propoxyphene.

**12.14 Compliance with Disclosure Law.** To the extent required by law the following provision applies: End User and Vocera agree to comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Vocera further specifically agrees that until the expiration of four (4) years after furnishing services and/or products pursuant to this Agreement, Vocera shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Vocera that are necessary to verify the nature and extent of the costs charged to End User hereunder. Vocera further agrees that if Vocera carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (USD 10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs.

**12.15 Debarment.** Vocera represents that (i) it has not been convicted of a criminal offense related to health care, and (ii) it is not currently listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs. Vocera shall notify End User immediately, in writing, of any change in this representation during the term of this Agreement. Such change in circumstances shall constitute cause by the End User to immediately terminate this Agreement. For purposes of this paragraph, Vocera is defined as the entity entering into this contract, and/or its principals, employees, directors and officers and shareholders (provided, however, that, if Vocera is publicly traded, the term "Vocera" shall not include shareholders owning publicly traded shares of Vocera).

**12.16 Personal Inducements.** Vocera represents and warrants that no cash, equity interest, merchandise, equipment, services or other forms of remuneration have been offered, shall be offered or will be paid or distributed by or on behalf of Vocera to End User and/or the employees, officers, or directors of End User or its member hospitals,



or, to any other person, party or entity affiliated with End User or its member hospitals, as an inducement to purchase or to influence the purchase of products or services by End User from Vocera.

**12.17 Updates.** If Vocera hereafter posts any new or modified versions of these Subscription Terms and Conditions, the applicable Product Documentation or the applicable Support Terms at [www.vocera.com/legal](http://www.vocera.com/legal), such new or modified version will apply to any Renewal Terms for Subscription Services purchased under this Agreement which begin subsequent to the date of such posting.

**12.18 Marketing.** Vocera may desire to announce, through its website and other marketing channels, that End User is making use of the Subscription Services. Such announcement may also include End User's logo and a link to its web site. End User will be provided with details in advance of any such announcement which will be subject to End User's approval, not to be unreasonably withheld.

### **13. Data Storage.**

**13.1 Data Storage Option.** If the Quote includes Data Storage then such storage will occur for the duration of the elected storage length from the first date of a Vocera Ease Encounter. Upon expiration of the Agreement End User may request that Vocera purge all the data, subject to End User's payment of any applicable fees.

**13.2 Patient Retrieval Requests.** For Data Storage Customers, a Patient Retrieval Request is defined as a request received by Vocera in writing, regardless of the source, for data relating to an individual patient following a Vocera Ease Encounter and limited to a seven-day search range. By way of example, a request for John Smith's media from a 1-day surgery with a 2- day recovery stay at a facility would constitute one (1) Patient Data Retrieval, while a request to include data relating to a follow-up surgery performed on the same patient ten days after the initial surgery would constitute two (2) Patient Data Retrievals. End User shall pay an additional fee per request for each Patient Retrieval Requests beyond the amount purchased on the Quote. Vocera will supply End User with the requested data within two business days of Vocera's receipt of such request, in a secure, mutually agreed upon format. If the underlying Vocera Ease Subscription Service renews automatically then the number of Patient Retrieval Requests purchased will also automatically renew.

**13.3 Disclaimer. VOCERA MAKES NO GUARANTEES AS TO THE CONTINUOUS AVAILABILITY OF DATA STORAGE SERVICES AND END USER ACKNOWLEDGES AND AGREES THAT ALL SUCH SERVICES ARE PROVIDED THROUGH AMAZON WEB SERVICES®. BY EXECUTING THIS DATA ADDENDUM END USER AGREES TO RELEASE AND HOLD VOCERA HARMLESS FROM ANY LOSS OF DATA OR LOSS OF ACCESSIBILITY TO DATA.**