

eClinicalWorks

**eClinicalWorks® SOFTWARE LICENSE AND SUPPORT AGREEMENT
FOR CLOUD ELECTRONIC MEDICAL RECORDS AND PRACTICE MANAGEMENT**

Customer Name: Mangum Family Clinic
Customer Address: 118 S. Louis Tittle
Mangum, OK 73554
Customer Tel/Fax: 918-510-4588
Contact Name: Craig Peter

Agreement prepared by: Rory Mallaghan/Chris Ellis

eClinicalWorks
2 Technology Drive
Westborough, MA 01581
Phone: 508-836-2700
Fax: 508-836-4466

Package:

Practice Details

Number Full Time Providers:
 Number of Part Time Providers:
 Total Named Providers:
 Number of Full Time Equivalents:
 Number of Locations:

1	(work >2 days a week).
0	(work ≤ 2 days a week)
1	
1	
1	

Customer must have a minimum of: **1.0 FTE for the initial term of the agreement.**

eClinicalWorks Packages

Key:

- ✓ Included
- Not included

Please select one option

Package	Option 1 EMR & PM	Option 2 XX EMR & PM Plus
eClinicalWorks Comprehensive EHR eClinicalWorks EMR: Front Office, Mid Office, Document Management, Referral Management, Meaningful Use or MIPS Dashboard, ePrescribing and Formulary Checking, Registry Reporting and EBO Viewer.	✓	✓
eClinicalWorks PM Practice Management (PM) Software Billing Implementation Service	✓	✓
Cloud	✓	✓
eClinicalWorks Virtual Assistant (EVA)	✓	✓
Patient Portal	✓	✓
eClinicalMobile (Smart phone App for IOS or Android)	✓	✓
eClinicalWorks P2P	✓	✓
eClinicalMessenger (per message fee below applies).	✓	✓
Services: all services to be done online		
Installation: 2 days		
Training: 5 days		
Data Migration: 1 free Data Migration**	✓	✓
Enterprise Business Optimizer 4 days		
24/7 Support & Maintenance included		
Unlimited Webinars & Videos included		
healow Telehealth Solutions Package (\$2 per healow TeleVisit and/or h2h encounter or \$50 for every 250 minute fee below applies). Includes healow TeleVisits, hello2healow (h2h), healow TeleVisit scheduling, healow TeleVisit progress notes, healow TeleVisit questionnaire and tracker integration on healow app for eClinicalWorks approved devices.	✓	✓
MIPS Quality Performance Category – Claims Data	✓	✓
Added Value Bundle MIPS Reporting and up to 4 hours of MIPS consultation eClinicalWorks Scribe for iPad, iPhones, Android and Window platform eClinicalTouch (iPad App for eClinicalWorks) Mobile speech recognition for iPad, iPhone & Android phones Kiosk Intelligent Medical Objects (IMO) Patient Education	-	✓
Pricing		
Monthly Fee per Full Time Equivalent (FTE)*	\$599	\$699 \$649

*Applicable for all packages above:

Airfare is not included and will be billed separately for any onsite service.

Implementation service days/hours are to be used within ninety (90) days of go-live or within six (6) months of the Effective Date, whichever comes first. Any unused days will be forfeited beyond that timeframe. Any additional services will be for an additional fee. Fees above do not include the per message fee for eClinicalMessenger. This fee is based on volume. For the first 1 – 1000 messages per month \$0.15 per message and for additional 1000(+) messages per month \$0.10 per message.

Tax not included. Sales tax will be charged unless a sales tax exemption certificate is presented.

If Customer requires Electronic Prescribing of Controlled Substances (EPCS) then Customer must select an EPCS service in the optional section of this agreement.

Fees above do not include the fee for healow Telehealth Solutions Package. Telehealth Solutions Package fee is either \$2 per healow TeleVisit and h2h encounter or \$50 for the initial 250 minutes and an additional \$50 for every subsequent 250 minutes, whichever is less, invoiced monthly per practice. For example, once Customer reaches 251 minutes, the Customer will be automatically charged an additional \$50 for the next block of 250 minutes. Minutes will not be rolled over from month to month. Pricing for healow Telehealth Solution Package is available through end of 2021 and is subject to change thereafter.

Due to the Covid-19 pandemic, through December 2021, the healow telehealth solutions package will be capped at \$100 multiplied by the total number of Provider(s) per month. Through December 2021, eClinicalWorks will bill either the lower of the two pricing options listed above for the healow telehealth solution package or the total number of Providers multiplied \$100 per month, whichever is less.

**One free Data Migration valued at \$15,000 per Data Migration.

Optional Items

Clearinghouse Selection

Please select a Clearinghouse: Contracting and payer enrollment is required with the Clearinghouse selected. The partnered clearinghouse will invoice Customer directly for all clearinghouse services in accordance with clearinghouse invoicing schedule. Setup and Configuration of one Partner Clearinghouse included. Any future clearinghouse switch (to another partner) will have additional fees for re-configuration and setup.

Change Healthcare (formerly Emdeon)	\$79 per month per Named Provider. <ul style="list-style-type: none"> Unlimited Insurance Eligibility/IE (270/271), Unlimited Paper & Electronic Claims (837), Real-time Professional Claim Scrubbing, Unlimited Clearinghouse Claim Status Reports (277CA) and Unlimited Electronic Remittance Advice/ERA (835) 	___Accept
	Statements* <ul style="list-style-type: none"> \$0.658 single page, \$0.18 additional page(s), \$0.04 per page of backside printing with variable data (Duplex) 	___Accept
TriZetto	\$79 per month per Named Provider <ul style="list-style-type: none"> Unlimited Enhanced Insurance Eligibility/IE (270/271), Unlimited Paper & Electronic Claims (837), Real-time Claim Scrubbing, Unlimited Clearinghouse Claim Status Reports (277CA, 999), Standard Alerts, Unlimited Electronic Remittance Advice/ERA (835), Claim Status Inquiry (CSI) and Authorizations (278) 	X Accept
	\$129 per month per Named Provider Integrated Services <ul style="list-style-type: none"> Unlimited Enhanced Insurance Eligibility/IE (270/271), Unlimited Paper & Electronic Claims (837), Real-time Claim Scrubbing, Unlimited Clearinghouse Claim Status Reports (277CA, 999), Standard Alerts, Unlimited Electronic Remittance Advice/ERA (835), Claim Status Inquiry (CSI), Authorizations (278), Auto Appeals and Advanced Alerts Services from TriZetto paperResolve and Advanced Reimbursement Manager	___Accept
	Workers Comp Claims (Electronic Claims with PWK and manual attachments upload): <ul style="list-style-type: none"> \$0.85 per claim (includes all attachments) 	XX Accept
	Statements* <ul style="list-style-type: none"> \$0.73 single page, \$0.16 additional page(s), \$20.00 per month per practice minimum 	XX Accept
Waystar (formerly Navicare)	\$79 per month per Provider <ul style="list-style-type: none"> Unlimited Insurance Eligibility/IE (270/271), Unlimited Paper & Electronic Claims (837), Real-time Professional Claim Scrubbing (V11), Unlimited Clearinghouse Claim Status Reports (277CA) and Unlimited Electronic Remittance Advice/ERA (835) Dental Claim processing for Waystar is available through eSolutions (now Waystar) 	___Accept
	\$129 per month per Named Provider Integrated Services <ul style="list-style-type: none"> Unlimited Enhanced Insurance Eligibility/IE (270/271), Unlimited Paper & Electronic Claims (837), Real-time Claim Scrubbing, Real Time Clearinghouse Edits, Unlimited Clearinghouse Claim Status Reports (277CA, 999), Standard Alerts, Unlimited Electronic Remittance Advice/ERA (835), Claim Status Inquiry (CSI), Authorizations (278), Auto Appeals and Advanced Alerts Services from Waystar on their Portal <ul style="list-style-type: none"> Claim Monitoring, Patient Estimation and Advanced Propensity to Pay Not available for Customers that require dental claims.	___Accept
	Statements*: <ul style="list-style-type: none"> \$0.69 single page, \$0.16 additional page(s), \$10.00 monthly minimum per provider 	___Accept

Additional vendors are available for patient statement and workers comp claims. Please visit <https://www.eclinicalworks.com/about-us/partners/back-office/>

Fax

Please select a fax option:

<p>Analog Fax:</p> <ul style="list-style-type: none">No additional charge from eClinicalWorks.Customer must have an analog fax line.Customer is responsible to procure peripherals devices such as fax servers as further described in hardware requirements.	<p>___ Accept</p>
<p>Cloud Fax:</p> <ul style="list-style-type: none">\$50 per month per line* <p>*Minimum \$50.00 per month per line covers up to 1000 pages per line. After that point every fax will be \$.04 per page. If customer cancels any fax services with eClinicalWorks, Customer understands and agrees that the fax number will no longer be available for Customer. One line may be either incoming and outgoing, outgoing only or incoming only. If Customer requests eClinicalWorks to port their existing number, then additional fees will apply and the existing carrier must allow number porting to eClinicalWorks.</p>	<p>XX Accept</p> <p>If accepted please indicate quantities: 1</p>

healow Open Access

Please indicate whether enrolling with healow Open Access:

<p>\$49 per Provider per month*</p> <p>healow Open Access - Online Appointment booking</p> <ul style="list-style-type: none">eClinicalWorks will provide HTML code to the practice to add a link for Healow Open Access to be added onto the Customer website.Patients may book appointment online with the Customer's Providers that are using the eClinicalWorks EMR.Customer will have the ability to respond to incoming healow Open Access appointment requests within the eClinicalWorks EMR. <p>*Customer will be billed monthly for any Provider that has any appointment(s) requested or scheduled through healow Open Access in that month. If no appointments are requested or booked, then there is no charge for that Provider for that month.</p>	<p>___ Accept</p>
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EPCS Service*

Please indicate whether enrolling with EPCS Service:

<p>Package one: One-year subscription</p> <ul style="list-style-type: none">\$250 per Named Provider per yearOne-year subscription to EPCS authentication serviceOne hardware OTP tokenIdentity proofingOptional phone binding for activation of a spare or replacement tokenFree shipping, and free replacement of a defective, lost, or stolen token	<p>___ Accept</p>
<p>Package two:</p> <ul style="list-style-type: none">\$275 per Named Provider per yearAll items in the one-year subscription package plus one spare hardware OTP token included	<p>___ Accept</p>

*Subscription will auto-renew on an annual basis unless Customer cancels the subscription on the Exostar portal prior to auto-renewal.

Interfaces

The below interfaces are available for Customer upon request. Please indicate which interface is needed:

<p>Quest Interface** Cost: eClinicalWorks will invoice Quest Format: HL7 Interface: Laboratory orders outbound and laboratory results inbound</p>	<p>___ Accept</p>
<p>LabCorp Interface** Cost: eClinicalWorks will invoice LabCorp Format: HL7 Interface: Laboratory orders outbound and laboratory results inbound</p>	<p>___ Accept</p>
<p>Hospital Interoperability** Cost: Interoperability with one hospital included in Cloud Subscription EMR&PM Package and EMR&PM Plus package in this Agreement. Format: specifications listed on https://www.eclinicalworks.com/products-services/interoperability/clinical-integrations/ Interfaces include:</p> <ul style="list-style-type: none"> • 1 Laboratory orders outbound and laboratory results inbound interface • 1 Radiology orders outbound and radiology results inbound interface • 1 Departmental Reports inbound interface 	<p>___ Accept</p> <p>If accepted list Hospital name _____</p>
<p>CommonWell and/or Carequality**</p> <ul style="list-style-type: none"> • CCDA bidirectional through CommonWell and/or Carequality for participating hospitals. 	<p>___ Accept</p>

**In order to complete the Interface, Interface Vendor must be willing to dedicate the time and resources necessary to fulfill its obligations with respect to the interface. Customer acknowledges and agrees that eClinicalWorks cannot complete the interface without the necessary assistance and support from Interface Vendor. In addition, third-party software may be required for the Interface to operate effectively. This Agreement does not create or impose any responsibility or liability on eClinicalWorks with respect to the functionality of any third-party vendor software or otherwise with respect to any obligations of Interface Vendor or any third-party vendor. Customer also understands that the timeframe for completion of the interface is contingent upon both the availability of eClinicalWorks and Interface Vendor and scope of the interface. If Interface Vendor is unable or unwilling to support the interface based on eClinicalWorks specifications, then the interface request cannot be fulfilled and eClinicalWorks shall have no responsibility to Customer with respect to the interface or its completion. If the scope of the interface changes for any reason or for no reason, a separate statement of work will need to be executed between eClinicalWorks and Customer and additional pricing shall apply. Interfaces may not be substituted. Additional fees will apply if Customer requests different interfaces.

340B Reporting Package

Please indicate whether enrolling with this service:

<p>340B Reporting setup, configuration, mapping and validation</p> <ul style="list-style-type: none"> • Onetime Fee: \$2,500 per eClinicalWorks approved 340B Reporting Vendor* • eClinicalWorks and the vendor to mutually agree to the requirements* <p>List of Reporting Vendor(s):</p> <ul style="list-style-type: none"> • McKesson 	<p>___ Accept</p>
<p>Automatic SFTP process for 340B Reporting</p> <ul style="list-style-type: none"> • Ongoing Fee: \$100 per month per vendor/SFTP • Customer is responsible for providing SFTP details to eClinicalWorks and ensuring that the SFTP is up and running with enough disk space to ensure file delivery. • eClinicalWorks will deliver the data files to this SFTP as per the frequency per the mutually agreed upon requirements. • Customer will notify eClinicalWorks if the file delivery fails and eClinicalWorks will resend the file <p>Prerequisite: 340B Reporting option above must be selected in order for this to apply.</p>	<p>___ Accept</p>

*If Customer selects a 340B Reporting Vendor that is not approved by eClinicalWorks then onetime fee may be subject to change based upon scope of the setup, configuration, mapping and validation. Customer acknowledges and agrees that if eClinicalWorks and the 340B Reporting Vendor does not mutually agree on a format then the 340 B Reporting request cannot be fulfilled and eClinicalWorks shall have no responsibility to Customer with respect to the 340B Reporting setup. This Agreement does not create or impose any responsibility or liability on eClinicalWorks with respect to the functionality of any third-party vendor or otherwise with respect to any obligations of the 340B Reporting Vendor. Customer also understands that the timeframe for completion is contingent upon both the availability of eClinicalWorks and the 340B Reporting Vendor and scope of the project. If the scope changes for any reason or for no reason, a separate statement of work will need to be executed between eClinicalWorks and Customer and additional pricing shall apply.

Terms and Conditions

This Software License and Support Agreement (“Agreement”) is entered into and made effective as of the Effective Date by and between Customer and eClinicalWorks, LLC (“eClinicalWorks”). This Agreement must be executed within 30 days from May 19, 2022 to be valid. If this Agreement hasn’t been signed within 30 days of issuance, please contact Sales at eClinicalWorks for a new agreement.

1. Definitions

- a. “Confidential Information” means all technical, business, and other information of one party (the “Disclosing Party”) disclosed to or obtained by the other party (the “Receiving Party”) in connection with this Agreement (including the pricing, terms and conditions of this Agreement) whether prior to, on or after the date of this Agreement, that derives economic value, actual or potential, from not being generally known to others, including, without limitation, any technical or non-technical data, designs, methods, techniques, drawings, processes, products, inventions, improvements, methods or plans of operation, research and development, business plans and financial information of the Disclosing Party.
- b. “Data Migration” includes one migration of the following elements from one database before go live: facility, provider, insurance master, referring providers, staff, patient demographics, guarantor, patient insurances, appointments, scanned documents, allergies, current medication, current problem list, immunization, diagnosis/assessment, lab, family history, past medical history, social history and surgical history. Customer is responsible for providing the data. eClinicalWorks will assist in the process if required. If any of the data cannot be extracted by eClinicalWorks, the Customer is responsible for providing discrete data to eClinicalWorks in Microsoft® Excel® or CSV format and Progress Notes and scanned documents in the PDF format. Customer is responsible to maintain full copy of Customer’s original data that is provided to eClinicalWorks.
- c. “EBO Viewer” means the canned reports which are included with the Software.
- d. “eClinicalMessenger” is a messaging service that enhances communication between the doctor and the patient.
- e. “eClinicalMobile” means functionality available through smart phone: Checking schedules, reviewing telephone and web messages, e-prescribing, examining lab results, charge capture at the point of service.
- f. “eClinicalTouch” is an iPad app that combines the most-used features of the eClinicalWorks EMR.
- g. “eClinicalWorks P2P” allows the practice to send electronic referrals to other providers or send patient records with attachments (progress notes, lab results, medical summary, patient scanned documents), share patient demographics and securely communicate with other physicians across city, state and region.
- h. “eClinicalWorks Scribe” is functionality which converts unstructured text into structured progress notes.
- i. “eClinicalWorks Virtual Assistant” or “EVA” provides ability for end user to type in commands and retrieve responses. Full list of commands are available in the eClinicalWorks EVA help manual.
- j. “Effective Date” is the date of the last signature below.
- k. “Electronic Medical Records” or “EMR” includes Front Office, Mid Office and Document Management.
 - i. Front Office includes appointment scheduling, telephone triage, referral management, office messaging, workflow, patient management (demographics, insurance), document generation (letters creation and Microsoft Word Mail Merge and document scanning and archiving), and integrated scan.
 - ii. Mid Office includes S.O.A.P, prescription management, protocol alerts (immunization and Reminders and Lab Diagnostic Imaging reminders), Prescription Management, ACPOE (prescriptions, labs,

- diagnostics, imaging), Growth and clinical analysis Charts, E&M coding advisor, clinical analysis reports, super bill reports.
- iii. Document Management includes scan and archival of documents, lab reports, consult notes, referrals, all patient documents and HIPAA documents.
- l. “EMR Go-Live” occurs when at least one user from the customer engages in training or in one of the following activities within the Software: the creation of a patient or appointment, documentation on a progress note, generation of prescription, order entry, sending or receiving orders, scanning documents, sending or receiving faxes, generating referral requests, or generating letters to patients.
- m. “ePrescribing” includes electronic prescribing and formulary checking through Surescripts.
- n. “healow TeleVisits” are scheduled appointments through a platform for a secure two-way video visit between the patient and the provider, enabling remote patient access to clinical healthcare. Additional terms and conditions will apply.
- o. “hello2healow” or “h2h” means an ad hoc visit through a platform for a secure two-way video and/or audio visit between the patient and the provider, enabling remote patient access to clinical healthcare. Additional terms and conditions will apply.
- p. “Hosting” means the hosting service that will be provided by eClinicalWorks. The eClinicalWorks Hosting Addendum is attached hereto as Exhibit A.
- q. “Initial Term” begins upon the Effective Date and ends thirty-six (36 months) after the Effective Date.
- r. “Installation” is the service where the eClinicalWorks software is being installed on the hardware.
- s. “Intelligent Medical Objects¹” is a smart search for ICD-10² codes and is recommended for ICD10.
- t. “Interface Vendor” means a third party vendor that has software with which the eClinicalWorks Software interfaces.
- u. “IP Rights” means (i) rights in patents, patent applications and patentable subject matter, whether or not the subject of an application, (ii) rights in trademarks, service marks, trade names, trade dress and other designators of origin, registered or unregistered, (iii) rights in copyrightable subject matter or protectable designs, registered or unregistered, (iv) rights in software, databases and documentation, (v) trade secrets, (vi) rights in Internet domain names, uniform resource locators and e-mail addresses, (vii) rights in semiconductor topographies (mask works), registered or unregistered, (viii) know-how, and (ix) all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, contract, license or otherwise.
- v. “Kiosk” is an interactive, touchscreen driven self-check-in software application for patients. Hardware is not included.
- w. “Maintenance” includes maintaining and improving the functionality of the Software with periodic upgrades, and maintaining the functionality of the drug and billing-code databases (ICD-10 and CPT4) with period upgrades.
- x. “MIPS Dashboards” or “Merit-Based Incentive Payment System Dashboards” are dashboards that provide performance data for participating eligible clinicians (EC) for quality and Promoting Interoperability (PI) performance categories and displays the selected Improvement Activities as defined by Centers for Medicare & Medicaid Services (CMS) under Medicare Access and CHIP Reauthorization Act’s (MACRA) Quality Payment Program (QPP). The ECs need to follow the required workflow for the dashboards to display the numbers.

¹ IMO, INTELLIGENT MEDICAL OBJECTS, IMO ANYWHERE, and IPL are registered trademarks of Intelligent Medical Objects, Inc. All Rights Reserved.

² The World Health Organization is the copyright holder of ICD-10

- y. “MIPS Quality Performance Category – Claims Data Submission Mechanism” means Customer to submit Quality-Data Code (QDC) and Current Procedural Terminology (CPT³) codes via CMS-1500 or CMS-1450 claims forms (or electronic equivalent) on behalf of participating ECs to CMS. Customer needs to identify eligible cases and report necessary data to meet claims data submission mechanism criteria for given performance period using eClinicalWorks billing software functionality.
- z. “MIPS Reporting” means Customer can submit the MIPS data (quality, promoting interoperability (PI) and/or improvement activities (IA)) using the MIPS Submission tool provided by eClinicalWorks. Data is aggregated based on medical record information captured by Customer within eClinicalWorks EHR for purposes of meeting MIPS requirements. The list of measures supported by eClinicalWorks for these data submission mechanisms is available on my.eclinicalworks.com. CMS asks that all data for the given measure to be submitted accordingly. Customer agrees to comply with project milestones in order to meet reporting period deadlines as defined by CMS. If Customer is using eClinicalWorks for only a portion of the calendar year, then Customer is required to provide QRDA 1 file from the previous EHR vendor in order to generate full year reporting.
 - aa. “Patient Portal” includes outbound communication (appointments reminders via email and health check review via email), lab results review online, appointment requests, web visits, refill requests from patients, patient medical history intake, patient statement downloads and patient demographic update (patient CCR for Personal Health Record or PHR)
 - bb. “PM Go-Live” occurs when at least one user from the customer engages in training or in one of the following activities within the Software: the creation of a patient or appointment, sending claims, posting payments, generating , or generating reports.
 - cc. “Practice Management” or “PM” means eClinicalWorks software that includes the charge capture (ICD and CPT), claims management, receivables management, patient statements, clearinghouse connectivity and financial analysis reports.
 - dd. “Providers” mean those Physicians, Nurse Practitioners, Physician Assistants, Audiologists, Optometrists, Ophthalmologist, Opticians Therapists, Occupational Therapists, Physical Therapists, Music Therapist, Speech Therapists, Massage Therapists, Chiropractors, Anesthesiologists, Psychologists, Dentists, Hygienists, Licensed Social Workers, Midwife, Nutritionists, Dietitians, Counselors, Mental Health Practitioners, Neurophysiologists, Certified Registered Nurse Anesthetist (CRNA), care managers, care coordinators, Podiatrists and other individual that is employed by or under contract with Customer to provide services and/or bill within the medical field. The term Provider shall not include Customer personnel employed by or under contract with Customer as office managers, secretaries, or other administrative staff, or Nurses (other than those who provide services and/or bill), and (hereinafter referred to as “Customer Personnel”). For any category of Customer staff not identified above, eClinicalWorks and Customer shall agree in writing as to who is a Provider.
 - i. “Full Time Equivalent” or “FTE” is the measure which the package fee is calculated from and is based on the number of Full Time Providers and Part Time Providers.
 - ii. “Full Time Provider” means any provider that works more than 2 days a week is equal to 1.0 Full Time Equivalent Provider (FTE) each.
 - iii. “Part Time Provider” means any provider that works 2 days or less per week is equal to 0.5 Full Time Equivalent Providers (FTE). If the practice has only part time providers, then the first part time provider will be considered 1.0.
 - iv. “Named Providers” are all the Full Time Providers and Part Time Providers who will be issued a license on the software.
 - ee. “Software” means the applications that Customer is contracting for under this Agreement.
 - ff. “Subscription Fee” means the ongoing fee agreed to by Customer in the Package Summary section herein.
 - gg. “Support” includes telephone and online support of the Software.
 - hh. “Training” means the training done by an eClinicalWorks certified trainer.

³ CPT is a registered trademark of the American Medical Association

2. Payment Terms

- a. Ongoing fees: The first month payment is due within 30 days of the Effective Date. Future ongoing fees will begin upon EMR Go-Live and/or PM Go-Live and are due and payable monthly in advance via electronic funds transfer unless otherwise agreed to by eClinicalWorks in writing.
eClinicalWorks will waive the first month EMR/PM Package fees.
Future months to begin one month after EMR Go-Live and/or PM Go-Live
 - i. The fees for the Software and associated services are set forth in the Agreement. The Software may contain embedded controls limiting usage beyond what Customer is contracted for. The amounts payable shall be due and payable on the date specified in this Agreement or if not specified then within thirty (30) days of receipt of invoice therefore and payment must be made in U.S. Dollars. eClinicalWorks will assess Customer a late payment charge on any amount which remains unpaid thirty (30) days after it is due, computed at the rate of one and one-half percent (1½%) per month or the highest allowable by law, whichever is lower, on the unpaid amount for every month the amount remains unpaid. All payments will be made without setoff, counterclaim, recourse or other defense.
 - ii. Unless otherwise specified, eClinicalWorks may increase the ongoing fees provided Customer receives at least sixty (60) days prior written notice of such increase. In no event will the ongoing fees (i) increase more frequently than annually, and (ii) increase more than five percent (5%) over the previous year's fees.
- b. Onetime fees:
 - i. Payment due within thirty (30) days of the Effective Date.
- c. Transactional fees:
 - i. Payment is due within thirty (30) days of receipt of invoice.
- d. Taxes
 - i. Fees are exclusive of all taxes, including without limitation, sales, use, value-added or other taxes or levies on transactions made under this Agreement. Unless Customer provides a tax exemption certificate, Customer shall pay eClinicalWorks an amount equal to any tax eClinicalWorks is required to collect or pay upon the sale, license, or delivery of Software or the services to Customer by eClinicalWorks, exclusive of taxes imposed upon eClinicalWorks's net income.

3. General

- a. License. Subject to the terms and conditions of this Agreement, eClinicalWorks grants and Customer accepts a nonexclusive, nontransferable, revocable license for the Providers to access and use the functionality of the Software during the term of this Agreement. Additionally, eClinicalWorks grants Customer Personnel the right to access the Software during the term of this Agreement. Use of the Software and services by both Providers and Customer Personnel are subject to the terms of this Agreement. Customer shall be liable for any breach of this Agreement by its Providers and/or Customer Personnel.
- b. Customer Modifications and Enhancements. Customer may not make any modifications or enhancements to the Software without eClinicalWorks prior written consent.
- c. Proper Use of Software. The Customer acknowledges that the continued integrity of the Software and eClinicalWorks performance of its obligations described in this Agreement are dependent upon Customer's use of the Software in accordance with the documentation available to Customer and the terms and conditions of this Agreement. Customer may not attempt to sell, sublicense, lease, permit, rent or transfer in any way whatsoever the Software. Customer agrees that it will not, at any time, without the prior written consent of eClinicalWorks, duplicate, decompile, disassemble or reverse engineer any software included within the Software, including without limitation the applications, to develop functionally similar software or permit any

third party to do any of the foregoing. Customer agrees to not grant access to any third party or allow any third party to use the Software for any purpose without the prior written consent of eClinicalWorks.

- d. Ownership and Proprietary Rights. eClinicalWorks and/or its licensor(s) retain all right, title, and interest in and to Software and any updates, changes, derivative works, enhancements, and/or modifications thereto. This Agreement does not grant Customer any IP Rights in the Software or any of its components. As between eClinicalWorks and Customer, eClinicalWorks and/or its licensor(s) are, and will be, the owner of (inclusive of all IP Rights therein) (i) the services, (ii) the Software, (iii) any other templates, ideas, methodologies, designs, materials, or technology developed or provided by eClinicalWorks.
- e. Feedback. To the extent that Customer provides any comments, instructions, suggestions, information, and/or other feedback to eClinicalWorks regarding any Service and/or otherwise (collectively, "Feedback"), Customer hereby assigns to eClinicalWorks all right, title, and interest including, without limitation, all IP Rights, in and to such Feedback. All Feedback shall be considered the Confidential Information of eClinicalWorks.
- f. Indemnity. eClinicalWorks shall indemnify, defend, and hold Customer harmless from any third party claim or action against Customer to the extent that it is based on an allegation that the Software, when used in accordance with the Agreement and documentation, has infringed an intellectual property right or trade secret and pay those damages or costs related to the settlement of such action or finally awarded against Customer in such action, not including attorney's fees, provided that, (a) Customer promptly notifies eClinicalWorks of such action, (b) gives eClinicalWorks full authority, information and assistance to defend such claim, and (c) gives eClinicalWorks control of the defense of such claim. eClinicalWorks shall have no liability regarding any claim arising out of: (i) any use of any release of the Software other than the most current release made available to Customer; (ii) the combination, use or operation of the Software with any third-party software, data or equipment (except if such use is contemplated by the Documentation or otherwise authorized in writing by eClinicalWorks), if the infringement was caused by such combination, use or operation; (iii) any modification or derivation of the Software not specifically authorized in writing by eClinicalWorks.
- g. Ownership of Customer Data. All the patient demographics and medical records created by this Software will be solely owned by the Customer.
- h. Protected Health Information. Use and disclosure of protected health information ("PHI") as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") shall be subject to and in accordance with the terms of eClinicalWorks Business Associate Addendum, located in Exhibit B. eClinicalWorks and Customer agrees that this Agreement may be amended from time to time if necessary to comply with HIPAA. Customer shall be responsible for entering into any Business Associate Agreements with third parties (such as Interface Vendors) that may be necessary to permit eClinicalWorks to provide the services set forth herein.
- i. Customer Responsibilities. Customer is responsible for all hardware and network to be installed and set up properly with appropriate security controls prior to eClinicalWorks software installation. Customer is responsible for any delays due to network set up and will result in rescheduling of install and training date and travel arrangements. Customer will incur any expenses involved with having to reschedule install and training dates. Any training cancelled within two weeks of training will be charged \$750 per week for the affected weeks.
- j. Consent. Customer is responsible for obtaining all necessary patient consent to permit eClinicalWorks to provide services as agreed upon in this Agreement.
- k. Audit: If Customer utilizes the Software beyond what Customer is contracted for, Customer will be required to purchase the applicable licenses and may incur a 10% penalty on the fees. eClinicalWorks may conduct an audit at any time to review usage. All fees assessed due to irregularities found during the audit may be retroactive to the date of the first usage.
- l. Upon signing this Agreement, Customer acknowledges and agrees that certain products selected within this Agreement are subject to additional terms and conditions which can be found at: <https://www.eclinicalworks.com/oda-terms> and are hereby incorporated by reference.

4. Support Services

- a. eClinicalWorks shall provide 24x7 support.

Technical Assistance:	Availability	Contact Info
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Online portal	24 x 7	http://my.eclinicalworks.com
Call Center	8:00am to 8:00pm EST Mondays through Fridays excluding holidays	1-508-475-0450

eClinicalWorks is not responsible for issues (including any security issues) related to Customer's computer or electronic device or internal and external network or system.

- b. Customer will receive any available Upgrades, without additional fee as long as this Agreement is in effect.
- c. Customer is aware that eClinicalWorks may run and deploy, any and all upgrades and/or patches related to a security fix and/or patient safety issue that are available on eClinicalWorks Cloud.

5. Warranties and Disclaimers

- a. eClinicalWorks warrants that:
 - i. it will maintain the confidentiality of information regarding any physician or patient record;
 - ii. it either owns or has the right to license the Software hereunder. eClinicalWorks warrants that the services provided hereunder will be performed in a competent and workmanlike manner, which meets or exceeds industry standards.;
 - iii. eClinicalWorks warrants that the services provided hereunder will be performed in a competent and workmanlike manner, which meets or exceeds industry standards; and
 - iv. it will update the Software (including, but not limited to, content usage for drug database and drug interaction checks, E&M Coding Advisor) as necessary to ensure that the Software complies with applicable federal or state laws.
- b. Customer warrants that :
 - i. Customer, Providers, Customer Personnel and Customer's representatives will work with eClinicalWorks in a professional and reasonable manner during the term of this Agreement. Customer agrees to comply with all applicable laws when using the Software and services contracted for under this Agreement; and
 - ii. Customer shall not reduce the licenses below the minimum above without the written consent of eClinicalWorks.
- c. Exclusions. eClinicalWorks' warranties do not apply to any: (i) unauthorized combination of the Software with any third-party software, data or equipment; or (ii) unauthorized use, modification or derivation of the Software.
- d. Third Party Components. Customer acknowledges and agrees that the Software may contain or interface with third-party applications, software and/or materials and open source software (collectively, "Third-Party Software Components") and Customer will comply with any applicable end user license agreements ("Third-Party EULAs"). NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ALL Third-Party Software Components ARE PROVIDED "AS IS," WITHOUT WARRANTIES OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED.
- e. DISCLAIMERS. OTHER THAN AS EXPRESSLY SET FORTH ABOVE, ECLINICALWORKS DOES NOT MAKE ANY OTHER express OR IMPLIED WARRANTEES, CONDITIONS, OR REPRESENTATIONS TO CUSTOMER, ANY OF ITS AFFILIATES OR ANY OTHER PARTY WITH RESPECT TO THE SOFTWARE, APPLICATIONS, SERVICES, PRODUCTS, DOCUMENTATION, OR DELIVERABLES PROVIDED HEREUNDER, AGREEMENT INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.
- f. LIMITATION OF LIABILITY. ECLINICALWORKS LIABILITY TO CUSTOMER FOR ANY LOSSES OR DAMAGES, IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE LIMITED TO THOSE ACTUAL AND DIRECT DAMAGES WHICH ARE REASONABLY INCURRED BY CUSTOMER AND SHALL NOT EXCEED THE MONTHLY SUBSCRIPTION FEE PAID BY CUSTOMER WITH RESPECT TO THE SERVICES GIVING RISE TO THE LIABILITY OVER THE MONTHS IN WHICH LIABILITY OCCURRED NOT TO

EXCEED TWELVE (12) MONTHS. ECLINICALWORKS WILL NOT BE LIABLE FOR SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF DATA, LOST PROFITS, OR LOSS OF GOODWILL IN ANY WAY ARISING FROM OR RELATING TO THIS AGREEMENT, THE SOFTWARE, APPLICATIONS OR SERVICES, EVEN IF ECLINICALWORKS HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING.

- g. No substitute for Professional Judgment. Notwithstanding anything to the contrary contained herein, Customer on behalf of itself, and its Providers and Customer Personnel acknowledge that the Software is not intended as a substitute for professional medical judgment and eClinicalWorks shall have no indemnification or liability obligations related to any failure to exercise such professional judgment. In the event that the Software or any report or information generated by the Software is used in connection with any diagnosis or treatment by Customer and/or any of Customer's employees, agents, representatives, and the like, Customer agrees to accept all responsibilities in connection therewith, including responsibility for injury, damage, and/or loss related to such diagnosis or treatment, irrespective of whether such injury, damage and/or loss results from your use of the Software.
- h. Non-Solicitation. Where allowable by law, during the term of this Agreement and for one year after the termination of this Agreement, Customer agrees not to directly or indirectly offer employment to or to hire any eClinicalWorks employee without the prior written consent of eClinicalWorks.

6. Confidentiality

- a. Nondisclosure. As consideration for and as a condition to a Disclosing Party furnishing any Confidential Information to a Receiving Party, each party agrees (i) to affirmatively treat as private; (ii) not to disclose to any third party unless required by law, rule, regulation or court order or by any governmental, judicial or regulatory process; and (iii) except as permitted herein, not to copy or otherwise reproduce any Confidential Information. Each party warrants that it will apply commercially reasonable safeguards to protect the Confidential Information against unlawful or otherwise unauthorized access, use, or disclosure and that it will take any other steps reasonably necessary to safeguard Confidential Information. The pricing contained herein is considered eClinicalWorks Confidential Information and may not be disclosed to any third party without eClinicalWorks' prior written consent.
- b. Permitted Use of Confidential Information. Each party agrees that it shall not use Confidential Information for any purpose other than for the use or provision of the Software and services hereunder, as applicable. Each party may, however, disclose Confidential Information to employees acting on that party's behalf and third-parties approved by eClinicalWorks ("Authorized Representatives") who demonstrate a need to know such information for performing tasks on behalf of that party using the Confidential Information; provided, however, that no Authorized Representative shall use or disclose the Confidential Information in any manner other than as permitted by this Agreement. Each party agrees that before disclosing any Confidential Information to an Authorized Representative, the Authorized Representative shall be informed of the confidential nature of such information and shall agree to abide by this Agreement and its standards of confidentiality.
- c. Notice of Required Disclosure. In the event that a party is required by any governmental, judicial or regulatory process or by any law, rule, regulation or court order (by oral questions; interrogatories; requests for production, information, or documents; subpoena; civil investigative demand; or any other similar process) to disclose any Confidential Information supplied to it or its to Authorized Representatives in the course of these dealings, it is agreed that the party who has received such request will provide the other party that the Confidential Information concerns or relates to with prompt written notice of such request(s) so that the other party may seek an appropriate protective order and/or waive compliance with the provisions of this Agreement.
- d. Return of Confidential Information. Each party agrees that it will promptly return or destroy all Confidential Information and/or all tangible materials embodying Confidential Information (in any form and including, without limitation, all summaries, copies, and excerpts of Confidential Information) following the occurrence of any event that makes the parties' possession of the Confidential Information unnecessary or upon written request of the other party, without retaining any copy or reproductions thereof. Each party shall reasonably expunge electronic copies of such Confidential Information as is practicable and not prohibited by law. Confidential Information that cannot be returned or destroyed will be kept confidential

and will continue to be subject to this Agreement for the term of this Agreement. Each party agrees that it will provide written certification of its compliance with this Section upon written request by the other party.

- e. Remedies. The parties agree that the Confidential Information is of a special, unique, and extraordinary character and that disclosure or other use of such information in violation of this Agreement will cause immediate and irreparable harm. The parties agree that each party shall be entitled to seek injunctive relief to further prevent use and/or disclosure in addition to other remedies available to it in law or in equity for breach of this Agreement.
- f. Notwithstanding the foregoing, nothing in this Agreement shall be construed to prohibit or restrict Customer from discussing problems and concerns with our Software or Services with other parties in accordance with the ONC Cures Act Final Rule.

7. Term and Termination

- a. Initial Term. The Initial Term begins upon the Effective Date and ends thirty-six (36 months) after the Effective Date unless earlier terminated as provided below.
- b. Automatic Renewal. Upon expiration of the Initial Term, the Agreement shall automatically renew for successive one (1) year periods unless Customer or eClinicalWorks gives prior written notice of its intent to terminate the Agreement, at least sixty (60) days prior to the anniversary of the Effective Date. If Customer defaults in its payments of the license fee for two successive billing periods, or causes its subscription to expire then eClinicalWorks may terminate this Agreement immediately.
- c. Termination. eClinicalWorks may terminate this Agreement without liability in the event that Customer (i) materially breaches the terms of this Agreement, including without limitation, sections 3 or 5(b) or (ii) makes a voluntary or involuntary assignment for the benefit of creditors or enters into bankruptcy proceedings. Customer will still be financially responsible for payment of the software and services used prior to effective date of termination.
- d. Data Transfer Options Upon Termination. Upon cancellation or termination by either party, Customer shall select a data transfer option as further described in Exhibit C. Once Customer receives the data from eClinicalWorks, Customer must review the data promptly to ensure its completeness. After Customer has received its data, it has thirty (30) days to ensure the data is complete. eClinicalWorks may permanently delete data if Customer does not notify eClinicalWorks within thirty (30) days of any discrepancies in the data received or if you do not select a Data Transfer Option within thirty (30) days of your termination date. eClinicalWorks is not responsible for any losses that may occur due to Customer's failure to (i) request a Data Transfer Option, or (ii) notify eClinicalWorks of any discrepancies in the data received.
- e. Reimbursement of services. Customer understands that eClinicalWorks is providing implementation and training services upfront which are not being charged to Customer as of the Effective Date but are instead included in the monthly fees throughout the Initial Term of the Agreement and are required to be paid by Customer. Accordingly, if Customer terminates this Agreement prior to the expiration of the Initial Term, Customer will pay eClinicalWorks \$100 per Provider per month for the remaining months of the Initial Term of the Agreement.

8. Miscellaneous

- a. Assignment. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns; provided, however, that such assignment shall not relieve either party of its obligations to the other as provided herein. Neither party may assign this Agreement in whole or in part without the prior written consent of the other party.
- b. Force Majeure. The obligations of the respective parties shall be abated for so long as, and to the extent that, their performance is rendered commercially impracticable by causes and events beyond the reasonable control of the affected party, including without limitation fires, floods, acts of God, strikes, unavailability or delays of materials or transportation, war, revolution, insurrection, acts of the public enemy, governmental regulation or prohibition. The

party claiming abatement of obligation hereunder shall reasonably notify the other of the cause or event giving rise to such claim and shall take all reasonable steps to limit the effect and duration of such cause or event.

- c. **Excluded Party.** Customer hereby represents and warrants that Customer and its employees, owners, directors and officers are not, and at no time have been, excluded from participation in any federally funded health care program, including, but not limited to, the Medicare and Medicaid programs (collectively, the "Governmental Program."). Customer hereby agrees to immediately notify eClinicalWorks of any threatened, proposed, or actual exclusion of it or its employees, owners, directors and officers from any Governmental Program. In the event that Customer or its employees, owners, directors and officers are excluded from participation in any Governmental Program during the term of this Agreement, or if at any time after the Effective Date of this Agreement it is determined that Customer is in breach of this Section, this Agreement may, at the sole discretion of eClinicalWorks, terminate as of the effective date of such exclusion or breach.
- d. **Headings.** The headings in this Agreement are for information and convenience only and shall not affect the construction thereof.
- e. **Entire Agreement.** This Agreement sets forth the entire Agreement between eClinicalWorks and Customer with respect to the subject matter hereof, and no modification, amendment, waiver, termination, or discharge of this Agreement or any provisions hereof shall be binding upon either party unless confirmed by written instrument signed by both parties.
- f. **Notices.** Any notices required to be given by one party to another hereunder shall be deemed duly given when (i) sent in writing, postage prepaid, via certified or registered mail, with return receipt, or (ii) delivered by hand, and addressed to the appropriate party at the addresses above or to such other address as either party shall have designated in writing to the other, (iii) sent via email to eClinicalWorks at notices@eclinicalworks.com, or (iv) delivered to Customer via the online portal. Notices sent via email or delivered via the online portal will be deemed given on the day received. The specification of means for giving notice herein shall not preclude the use of other forms of written notice when in the context of their use they provide equal or greater effective actual notice to the receiving party than the means specified herein.
- g. **Governing Law.** This Agreement, its validity, construction, and effect shall be governed by the laws of the Commonwealth of Massachusetts.
- h. **Arbitration.** Any and all controversies, claims, or disputes arising out of, relating to, or connected with this Agreement or Customer's use of the services and/or the Software shall be referred to and settled by individualized arbitration administered by the American Arbitration Association ("AAA") in accordance with the provisions set forth under the AAA's Commercial Arbitration Rules and any other applicable rules and procedures ("Rules") by a panel of three arbitrators appointed in compliance with the Rules. This includes all disputes over arbitrability.
 - i. The Parties to this Agreement further acknowledge and agree that:
 - 1. the location of the arbitration, including the location of all arbitration hearings, shall be Boston, Massachusetts;
 - 2. the arbitral award shall address the costs and expenses of arbitration and all matters related thereto, including, the allocation of same between the parties;
 - 3. the award of the arbitrators shall be final and binding upon the parties; and
 - 4. the parties submit to the jurisdiction of the federal courts of Massachusetts for the purposes of ratifying any award made pursuant to arbitration proceedings conducted in accordance with this clause and/or may enforce the award through such courts.
 - ii. By using the services and/or the Software, Customer expressly waives its right to pursue all controversies, claims, or disputes in court and instead must submit any such controversies, claims, or disputes to arbitration as described above.
 - iii. Any legal fees or expenses incurred by Customer during any dispute, shall be the sole responsibility of Customer.
- i. **Waiver Of Class And Joint Claims:** Any arbitration (or, if arbitration of the action is not permitted by law, litigation) shall be solely on behalf of an individual person, and shall not be consolidated or joined with the claims of any other person or brought on behalf of a putative class unless previously agreed to in writing by both eClinicalWorks and Customer. This provision shall survive the termination of this Agreement, regardless of the cause of such termination.

- j. Disclosures. Customer acknowledges that it has read “eClinicalWorks V11 Mandatory Disclosures” and “eClinicalWorks Enterprise Patient Portal v2.1 Mandatory Disclosures” (<https://www.eclinicalworks.com/resources/meaningful-use/>) regarding the potential costs and limitations associated with eClinicalWorks Software and products.
- k. Authority. Each representative signing below hereby represents that each is authorized to enter into this Agreement.
- l. Counterparts. This Agreement may be executed in any number of counterparts which, when taken together, will constitute one original, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. Each party hereto consents to be bound by electronic, photocopy or facsimile signatures of such party’s representative hereto.
- m. Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
- n. Relationship. It is mutually understood and agreed that the relationship between the parties is that of independent contractors. Neither party is the agent, employee, or servant of the other. Nothing in this Agreement is intended to create any partnership, joint venture, lease or equity relationship, expressly or by implication between the parties.

Exhibits

Exhibit A – eClinicalWorks Hosting Addendum

Exhibit B – Business Associate Addendum

Exhibit C – Data Transfer Options

CONTRACT EXECUTION:

IN WITNESS WHEREOF, the respective authorized representative of each party has executed this Agreement, including any other applicable addenda or exhibits as specified herein, to be effective as of the Effective Date.

CUSTOMER

eClinicalWorks, LLC

(Authorized Signature)

(Authorized Signature)

(Name - Print or Type)

(Name - Print or Type)

Mangum Family Clinic

eClinicalWorks, LLC

(Customer Company - Print or Type)

(Customer Company - Print or Type)

Date

Date

(Email address – Print or Type)

EXHIBIT A – eClinicalWorks Hosting Addendum

Article 1 Hosting Services

1.1 eClinicalWorks Responsibilities. Subject to the terms of this Agreement, eClinicalWorks will: (a) make the services using the web based software applications (“Hosted Applications”) available to Customer via the Internet based on a Cloud basis; (b) make the Documentation for the Hosted Applications available to Customer; and (c) provide to Customer a user name, password and other information required to use the Hosted Applications.

1.2 Customer Responsibilities.

(a) Customer is responsible for: (i) procuring, at its expense, the necessary environment at the Customer’s location(s) to use the Hosted Applications via the Internet, including, without limitation, all computer hardware, software and equipment, Internet access and telecommunications services (collectively, the “Customer Systems”); (ii) complying with all laws, rules and regulations related to the Customer Systems; (iii) keeping its user name and password secret and confidential, and, for any communications or transactions that are made, using the same; (iv) changing its user name and password if it believes that the same has been stolen or might otherwise be misused; (v) maintaining security of its environment that it controls; (vi) verifying identity of users to whom it provides access to the information within the hosted application (vii) obligations under any third party agreements to which Customer is a party, including, without limitation, any agreement pursuant to which Customer procures the Customer Systems or any portion thereof, regardless of whether eClinicalWorks provides Customer with any assistance in such procurement.

(b) Customer shall bear all costs of obtaining, installing and maintaining the Customer Systems.

1.3 Definitions.

(a) “Services” shall mean the Hosting services set forth in Section 1.4 below which are subject to payment of the Hosting fees.

(b) “System” shall mean the server(s) on which the Website is hosted and all other equipment utilized by eClinicalWorks to provide the Services hereunder.

(c) “Website” shall mean the URL or any eClinicalWorks domain provided to the Customer to access the Hosted Application.

(d) “Documentation” means the user and technical manuals and other documentation provided or made available to Customer describing the Hosted Applications’ features, functionalities, requirements and specifications.

1.4 Services to be provided.

(a) eClinicalWorks shall provide all hosting-related maintenance including, back-ups, server maintenance and trouble-shooting.

(b) Network Connectivity. eClinicalWorks shall provide the Website with connection to the Internet for approximately twenty-four (24) hours seven days a week excluding periods of time necessary for Website maintenance and Internet performance issues. eClinicalWorks reserves the right to have planned outages for hardware and software maintenance.

(c) Administration. eClinicalWorks shall provide regular routine and other systems administration and support services necessary to maintain the Website. eClinicalWorks shall provide Customer with one (1) business day of notice prior to service interruptions due to planned maintenance. Any service interruption for planned maintenance shall not exceed the time reasonably necessary to complete such maintenance.

(d) Security. eClinicalWorks shall take reasonable measures to prevent unauthorized access to the Website. In this regard, eClinicalWorks shall use at least the same security measures it uses to protect its own proprietary information. . For security and administrative reasons only, the hosted application support and maintenance team will have access to all files on

the server. eClinicalWorks is not responsible if Customer makes changes to default security settings which allow access to Customer data.

1.5 Acceptable use policy.

(a) Acceptable Use Policy. Customer shall use the Hosted Applications only for lawful purposes, in compliance with all applicable laws. Customer shall be responsible for all use of the Hosted Applications by its Providers and Customer Personnel, regardless of whether such use is known to or authorized by Customer. The Hosted Applications are provided for use in conformance with the terms and conditions of this Agreement. eClinicalWorks reserves the right to investigate suspected violations of this Agreement. If eClinicalWorks becomes aware of possible violations, eClinicalWorks may initiate an investigation including gathering information from Customer and examination of material on eClinicalWorks' servers. During the investigation, eClinicalWorks, in its sole discretion, may suspend access to the Website, Hosted Application, and/or remove the Website content and other material from eClinicalWorks' servers. If eClinicalWorks determines, in its sole discretion, that a violation of this Agreement has occurred, it may take responsive action, including, without limitation, permanent removal of the Website content, or any portion thereof, from eClinicalWorks' servers, issuance of warnings to Customer or the suspension or termination of this Agreement to Customer.

(b) Passwords. Customer is responsible for maintaining the confidentiality of any password(s) and access codes used to access the Hosted Applications and Website, and is fully responsible for all activities that occur under those password(s) and access codes. Customer agrees to notify eClinicalWorks immediately of any unauthorized use of its password(s). Customer shall be solely responsible for the security of its passwords. Continued failure by Customer to maintain password security may result in the suspension or termination of Services.

System Security. Customer shall be prohibited from using the Services to compromise the security of the Services, the System, the Website, Hosted Application, or any other website on the Internet. Customer use or distribution of tools designed for compromising security is strictly prohibited, including, without limitation, password guessing programs, cracking tools, penetration and vulnerability scans or network probing tools. If Customer is involved in violations of security, eClinicalWorks reserves the right to release identification information of Customer to systems administrators at other websites in order to assist them in resolving security incidents. eClinicalWorks shall also fully cooperate with law enforcement authorities in investigating suspected lawbreakers.

1.6 System Monitoring. eClinicalWorks reserves the right to monitor the System electronically from time to time and to access and disclose any information as permitted or required by any law or regulation, to operate its System properly, or to protect itself or other Customers, provided that, eClinicalWorks shall provide Customer prior notice of any such disclosure. eClinicalWorks shall fully cooperate with law enforcement authorities in investigating suspected violators. It is not eClinicalWorks' intention that the Services, System or eClinicalWorks' facilities be used in contravention of the Communications Decency Act of 1996, 47 U.S.C. Section 223, or any other applicable law. Customer shall indemnify and defend eClinicalWorks for any claims, suits, losses or actions against eClinicalWorks arising from, related to or in connection with any violation by Customer of the Communications Decency Act.

1.7 Warranty of Content. In addition to the warranties set forth in the Agreement, the parties to this Agreement warrant that they shall not use on the Website any content or other intellectual property that: (i) infringes on the intellectual property rights or any rights of publicity or privacy of any third party; (ii) violates any law, statute, ordinance or regulation (including, without limitation, laws and regulations governing export control, unfair competition, antidiscrimination or false advertising); (iii) is defamatory, libelous, unlawfully threatening or unlawfully harassing; (iv) is obscene, child pornographic or harmful to minors; or (v) contains any viruses, Trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any system, data or personal information. Violations of this Section not only constitute a material breach of the Agreement and trigger immediate termination by a party not in breach, but may also subject such party to criminal and/or civil liability.

Article 2
Compliance with Laws.

2.1 Compliance with Laws

(a) The parties shall comply with all applicable laws and regulations concerning security and privacy with respect to their obligations under this Agreement, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and all regulations promulgated there under (“HIPAA”).

(b) eClinicalWorks acknowledges and agrees that the data and information that is compiled or passes through the databases that are a part of the Hosted Applications and that specifically relates to patients, patient care or physician procedures or diagnosis (collectively, the “Customer Data”), and all right, title and interest therein, is and shall remain the exclusive property of Customer. Notwithstanding the foregoing, Customer hereby grants eClinicalWorks a perpetual, unlimited license to use the Customer Data, in any form or format, for data benchmarking, sharing, warehousing, resource utilization and similar data analysis services; provided, however, that eClinicalWorks shall protect and maintain the confidentiality of all individual identifiable patient and hospital data and eClinicalWorks shall comply with HIPAA, as applicable, with respect to such data.

Article 3 Service Levels

1. Availability
A. Uptime

eClinicalWorks agrees that the Hosted Applications will be available 99.9% of the time during the hours of 5:00 AM to 12:00 AM local time of the data center, seven (7) days per week (the “Up-Time Commitment”). The Up-Time Commitment will be measured monthly.

B. Exclusions
Calculation of the Up-Time Commitment shall exclude unavailability of the Hosted Applications caused by any of the following:

- i. Scheduled, announced downtime for maintenance; provided, however, that such downtime shall not exceed two (2) hours, per event, unless the parties mutually agree otherwise; eClinicalWorks has a daily maintenance windows from 1AM-3AM local standard time of the data center.
- ii. Failures in the Internet that are outside eClinicalWorks’ control;
- iii. Hardware, communication lines or application problems (*e.g.*, Internet, ISDN, DSL, etc.) of Customer that prevent/disrupt access; or
- iv. Failures by Customer to comply with the eClinicalWorks’ specifications outlined in the Documentation for the Hosted Applications.

C. Broadband Requirements

(a) It is Customer’s responsibility to provide internet service provider (ISP). eClinicalWorks uses Transport Layer Security (TLS) connectivity to eClinicalWorks’ collocation facility with bandwidth to support application services selected by Customer for performance and usability.

(b) The eClinicalWorks Service Levels above are based on eClinicalWorks hardware requirements.

EXHIBIT B – Business Associate Addendum

This Business Associate Addendum (“**Addendum**”) is entered into by and between eClinicalWorks, LLC, a Massachusetts limited liability company, (“**eClinicalWorks**”) and **Mangum Family Clinic**, (“**Customer**”) as an integrated part of that certain Software License and Support Agreement (“**Agreement**”) entered into contemporaneously with this Addendum between eClinicalWorks and Customer, and sets forth in writing certain understandings and procedures governing eClinicalWorks’s use of protected health information as that term is defined under the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and any regulations adopted under those laws by the United States Department of Health and Human Services and as those regulations may be amended from time to time.

1. Definitions

- a. **Catch-all definition:** The following terms used in this Addendum (whether or not capitalized) shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Subcontractor, Unsecured Protected Health Information, and Use.
- b. **Specific definitions:**
 - i. **eClinicalWorks.** “**eClinicalWorks**” shall generally have the same role as a “business associate” under 45 C.F.R. § 160.103, and in reference to the party to this Addendum shall refer to the entity defined as eClinicalWorks above.
 - ii. **Customer.** “**Customer**” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this Addendum, shall refer to the entity defined as Customer above.
 - iii. **HIPAA Rules.** “**HIPAA Rules**” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
 - iv. **Successful Security Incident.** “**Successful Security Incident**” shall mean a security incident that results in the unauthorized access, use, disclosure, modification, or destruction of Protected Health Information.
 - v. **Unsuccessful Security Incident.** “**Unsuccessful Security Incident**” shall mean a security incident that does not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for example, and not for limitation, pings on Business Associate’s firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses).

2. Obligations and Activities of eClinicalWorks

- a. eClinicalWorks agrees to:
 - i. Not use or disclose Protected Health Information other than as permitted or required by this Addendum or as required by law;
 - ii. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of Protected Health Information other than as provided for by this Addendum;
 - iii. Report to Customer in writing any use or disclosure of protected health information not permitted under this Addendum of which eClinicalWorks becomes aware, including breaches of Unsecured Protected Health Information as required at 45 C.F.R. § 164.410 and any Successful Security Incident, within ten (10) days of any Breach or Successful Security Incident. The Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents;
 - iv. In making any written report under Section 2(a)(iii) of this Addendum, abide by any reasonable written breach notification procedures actually received by eClinicalWorks from Customer;
 - v. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of eClinicalWorks agree to the substantially same restrictions, conditions, and requirements that apply to eClinicalWorks with respect to such information;
 - vi. Make available Protected Health Information in a Designated Record Set to Customer as necessary to satisfy Customer’s obligations under 45 C.F.R. § 164.524 within thirty (30) days of receipt of such request. Customer agrees to maintain and properly store a copy of all Protected Health Information used by or disclosed to eClinicalWorks;
 - vii. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by Customer pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Customer’s obligations under 45 C.F.R. § 164.526;
 - viii. Maintain and make available the information required to provide an accounting of disclosures to the Customer as necessary to satisfy Customer’s obligations under 45 C.F.R. § 164.528 by providing such information within thirty (30) days of receipt of such request;

- ix. To the extent eClinicalWorks is to carry out one or more of Customer's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to Customer in the performance of such obligation(s); and
- x. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by eClinicalWorks

- a. eClinicalWorks may use or disclose Protected Health Information as necessary to perform the services set forth in the Addendum or under any other agreement between Customer and eClinicalWorks. eClinicalWorks is also authorized to use Protected Health Information to aggregate data or de-identify the information in accordance with 45 C.F.R. § 164.514(a)–(c). eClinicalWorks may use aggregated data or de-identified information for the purpose of testing or maintaining its software or for any other purpose permitted by law.
- b. eClinicalWorks may use or disclose Protected Health Information as required by law.
- c. eClinicalWorks agrees to make uses and disclosures and requests for Protected Health Information consistent with Customer's minimum necessary policies and procedures.
- d. eClinicalWorks may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Customer except for the specific uses and disclosures set forth below.
- e. eClinicalWorks may use Protected Health Information for its proper management and administration or to carry out the eClinicalWorks's legal responsibilities.

4. Provisions for Customer to Inform eClinicalWorks of Privacy Practices and Restrictions

- a. Customer shall notify eClinicalWorks of any limitation(s) in Customer's notice of privacy practices under 45 C.F.R. § 164.520, to the extent that such limitation may affect eClinicalWorks's use or disclosure of Protected Health Information.
- b. Customer shall notify eClinicalWorks of any changes in, or revocation of, the permission by an individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect eClinicalWorks's use or disclosure of Protected Health Information.
- c. Customer shall notify eClinicalWorks of any restriction on the use or disclosure of Protected Health Information that Customer has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect eClinicalWorks's use or disclosure of Protected Health Information.

5. Permissible Requests by Customer

- a. Customer shall not request eClinicalWorks to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Customer, except that eClinicalWorks may use or disclose Protected Health Information for management and administration and legal responsibilities as described above.

6. Term and Termination

- a. **Term.** The Term of this Addendum shall be effective as the Effective Date, and shall continue according to the terms of the Agreement or on the date Customer terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b. **Termination for Cause.** eClinicalWorks authorizes termination of this Addendum by Customer, if Customer determines eClinicalWorks has violated a material term of this Addendum and eClinicalWorks has not cured the breach or ended the violation within thirty (30) days after written notice from Customer of the violation and associated term of this Addendum.
- c. **Obligations of eClinicalWorks Upon Termination.** Upon termination of this Addendum for any reason, eClinicalWorks, with respect to Protected Health Information received from Customer, or created, maintained, or received by eClinicalWorks on behalf of Customer, shall:
 - i. Retain only that Protected Health Information which is necessary for eClinicalWorks to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Customer or, if agreed to by Customer, destroy the remaining Protected Health Information that eClinicalWorks still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as eClinicalWorks retains the Protected Health Information;
 - iv. Not use or disclose the Protected Health Information retained by eClinicalWorks other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Section 3(e) of this Addendum; and
 - v. Return to Customer or, if agreed to by Customer, destroy the Protected Health Information retained by eClinicalWorks when it is no longer needed by eClinicalWorks for its proper management and administration or to carry out its legal responsibilities.

- vi. In the event eClinicalWorks determines that returning or destroying the Protected Health Information is infeasible, eClinicalWorks shall continue to extend the protections to such Protected Health Information as required by the HIPAA Rules and limit further use and disclosure for so long as eClinicalWorks retains such Protected Health Information.
- d. **Survival.** The obligations of eClinicalWorks under this Section shall survive the termination of this Addendum.

7. Miscellaneous

- a. **Regulatory References.** A reference in this Addendum to a section in the HIPAA Rules means the section as in effect or as amended.
- b. **Amendment.** Customer and eClinicalWorks mutually agree that eClinicalWorks may amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- c. **Interpretation.** Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Rules.
- d. **Governing Law.** This Addendum will be governed by the laws of the United States of America and by the laws of the Commonwealth of Massachusetts. The parties irrevocably consent to the exclusive personal jurisdiction of the federal and state courts located in Massachusetts, as applicable, for any matter arising out of or relating to this Addendum without regard to any choice of law principles, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in Massachusetts, such personal jurisdiction will be nonexclusive.
- e. **Execution.** Each representative signing below hereby represents that each is authorized to enter into this Addendum.
- f. **Complete Agreement.** This Addendum constitutes the final, complete and exclusive Addendum between the Parties with respect to its subject matter and supersedes all past and contemporaneous agreements, promises, and understandings, whether oral or written. This Addendum may not be amended or modified except by a writing signed by both Parties and identified as an amendment to this Addendum.
- g. **Counterparts.** This Addendum may be executed in any number of counterparts which, when taken together, will constitute one original, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. Each Party hereto consents to be bound by electronic, photocopy or facsimile signatures of such Party's representative hereto.
- h. **Severability.** In the event any provision of this Addendum is held to be invalid or unenforceable, the remainder of this Addendum shall remain in full force and effect.
- i. **Relationship.** It is mutually understood and agreed that the relationship between the Parties is that of independent contractors. Neither Party is the agent, employee, or servant of the other. Nothing in this Addendum is intended to create any partnership, joint venture, lease or equity relationship, expressly or by implication between the Parties.

8. Contract Execution

IN WITNESS HEREOF, the respective authorized representative of each party has executed this Addendum to be effective as of Effective Date as set forth in the Agreement.

Customer
Authorized Signature:
Name:
Customer Title or Position:

eClinicalWorks, LLC
Authorized Signature:
Name:
eClinicalWorks Title or Position:

eClinicalWorks® provides multiple, distinct options for customers to transfer their data from eClinicalWorks. For more information on other data transfer options from eClinicalWorks, open a support case on the my.eclinicalworks.com Customer Portal. Indicate the data transfer option chosen by the customer.

eCW Cloud Customers

1. **C-CDA Export:** Self-Service Export through the eClinicalWorks application. This option enables customers to export their data from eClinicalWorks themselves, free of charge, and without any assistance from eCW. For more information about downloading C-CDA, refer to the C-CDA Data Portability Users Guide, which is available on the my.eclinicalworks.com Customer Portal: Modern View > Knowledgebase > Product Documentation > Documents > Search for “C-CDA”. Customers can utilize this option at any time while they have access to the EHR software.

Total Cost: Free of charge

The Data Export C-CDA File includes the 2015 Edition Common Clinical Data Set data elements, which include but are not limited to: Patient Demographics (Name, Sex, Date of Birth, Race, Ethnicity and Preferred Language), Smoking Status, Problem List, Medication List, Laboratory Tests and Results, Vital Signs, Procedures, Care Team Members, Immunizations, Unique Device Identifiers, Assessments, Treatment Plan, Goals, and Health Concerns. This is not a comprehensive data export; if one is needed, select the One-Time Unencrypted Database Backup, Including Scanned Documents (as described in option 2).

2. **One-Time Unencrypted Database Backup, Including Scanned Documents:** eClinicalWorks will capture and provide a one-time unencrypted copy of the database. All EHR data (including structured and free-text notes associated with a patient’s chart) will be part of the unencrypted copy of the database backup. Note: this option is provided in a relational database machine readable format (.BAK file format). Refer to options 1 and 3 for human readable file formats for specified subsets of data. If the data is 50 GB or more, an encrypted hard drive is required. If the data is less than 50 GB, data will be delivered *via* sFTP at no additional cost. **Total Cost:** Free of charge if no encrypted hard drive is needed; \$500 plus applicable taxes (includes delivery) if a hard drive is required

3. **Focused Data Extraction Service:** Human readable (*e.g.*, TXT, HTML, PDF) formatted data export option. eClinicalWorks will extract the data, for a focused subset of data elements only, as follows:

- Patient Demographics and Appointments in TXT format
- Locked Progress Notes in read-only HTML format (all Progress Notes must be locked by the practice prior to export)
- Patient Documents in native format with index file
- Pink Paper Clip (interface results) in read-only HTML format
- Medical Summary
- Select Financial Reports

In addition to the aforementioned human readable extracts, this option also includes the One Time Unencrypted Database Backup, Including Scanned Documents (as described in option 2).

If the data is 50 GB or more, an encrypted hard drive is required. If the data is less than 50 GB, data will be delivered *via* sFTP at no additional cost.

Total Cost: \$3,000 for 1-3 providers, \$4,500 for 4-10 providers, \$1,500 for every additional 10 providers. If the data is 50 GB or more, an encrypted hard drive is required for \$500 plus applicable taxes (includes delivery).

Larger customers should contact eClinicalWorks to identify the best data solution for them. This option is often chosen by customers who are closing or retiring.

Self-Hosted eCW Customers

1. **C-CDA Export:** Self-Service Export through the eClinicalWorks application. This option enables customers to export their data from eClinicalWorks themselves, free of charge, and without any assistance from eCW. For more information about downloading C-CDA, refer to the *C-CDA Data Portability Users Guide*, which is available on the my.eclinicalworks.com Customer Portal: Modern View > Knowledgebase > Product Documentation > Documents > Search for “C-CDA.” Customers can utilize this option at any time while they have access to the EHR software.

Total Cost: Free of charge

The Data Export C-CDA File includes the 2015 Edition Common Clinical Data Set data elements, which include but are not limited to: Patient Demographics (Name, Sex, Date of Birth, Race, Ethnicity and Preferred Language), Smoking Status, Problem List, Medication List, Laboratory Tests and Results, Vital Signs, Procedures, Care Team Members, Immunizations, Unique Device Identifiers, Assessments, Treatment Plan, Goals, and Health Concerns. This is not a comprehensive data export; if one is needed, select the One-Time Unencrypted Database Backup, Including Scanned Documents (as described in option 2).

2. One-Time Unencrypted Database Backup, Including Scanned Documents: eClinicalWorks will capture and provide a one-time unencrypted copy of the database. All EHR data (including structured and free-text notes associated with a patient's chart) will be part of the unencrypted copy of the database backup. Note: this option is provided in a relational database machine readable format (.BAK file format). Refer to options 1 and 3 for human readable file formats for specified subsets of data. All scanned documents will be available, unencrypted, on the self-hosted customer's server.
Total Cost: Free of charge if no encrypted hard drive is requested; \$500 plus applicable taxes (includes delivery) if an encrypted hard drive is requested.

3. Focused Data Extraction Service: Human readable (*e.g.*, TXT, HTML, PDF) formatted data export option. eClinicalWorks will extract the data, for a focused subset of data elements only, as follows:

- Patient Demographics and Appointments in TXT format
- Locked Progress Notes in read-only HTML format (all Progress Notes must be locked by the practice prior to export)
- Patient Documents in native format with index file
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In addition to the aforementioned human readable extracts, this option also includes the One Time Unencrypted Database Backup, Including Scanned Documents (as described in option 2).

If the data is 50 GB or more, an encrypted hard drive is required. If the data is less than 50 GB, data will be delivered *via* sFTP at no additional cost.

Total Cost: \$3,000 for 1-3 providers, \$4,500 for 4-10 providers, \$1,500 for every additional 10 providers. If the data is 50GBs or more, an encrypted hard drive is required for \$500 plus applicable taxes (includes delivery).

Larger customers should contact eClinicalWorks to identify the best data solution for them. This option is often chosen by customers who are closing or retiring.