

## **API LICENSE AGREEMENT**

This API License Agreement (“Agreement”), effective as of the date of the final signature to this Agreement (the “Effective Date”), is entered into by and between the **National Commission on Certification of Physician Assistants Inc.** (“NCCPA”), having offices at 12000 Findley Road Suite 200, Johns Creek, GA 30097-1409, and the organization represented by the individual executing this agreement (“Partner”). As used in this Agreement, “Party” means either NCCPA or Partner, as appropriate, and “Parties” means NCCPA and Partner.

NCCPA offers access to its API under this Agreement on a standard, non-negotiable basis and is not resourced to review or accept proposed revisions or redlines from Partner. The terms of this Agreement will control, subject to applicable law. NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth below, the Parties agree as follows:

### **1. DEFINITIONS**

Certain terms used in this Agreement are defined in the attached Glossary (Exhibit 1). Other terms are defined in the context in which they are used and have the meanings there indicated. Those terms, acronyms and phrases used in the information technology industry shall be interpreted in accordance with their generally understood meanings in such industry.

### **2. DATABASE AND APPLICATION PROGRAM INTERFACE**

This Agreement is being made and entered into with reference to the following:

- (a) NCCPA has developed an online repository (the “Database”) of NCCPA Data. In connection with the services NCCPA provides to physician assistants (“PAs”), NCCPA has also developed a Category 1 CME application program interface (“Category 1 CME API”) to provide an interface to the Database to which Partner may have access pursuant to the terms of this Agreement.

The Category 1 CME API is NCCPA’s service that allows preapproved licensees to retrieve lookup list data related to Category 1 CME (“Lookup List Data”) and to submit CME activities on behalf of the PA for Category 1 CME earned (“Category 1 CME Data”). The Category 1 CME API consists of an API that includes calls to retrieve sponsor and provider specific information and to submit Category 1 CME activities on behalf of the PA. In order to submit activities on behalf of the PA, the licensee must implement the PA Account Direct Connect (“PA Account Direct Connect”) process, which will allow the PA to connect to their account on the NCCPA system and electronically consent to licensee establishing a connection on the PA’s behalf. The details on PA Account Direct Connect, available API calls and format of the results are defined in the Category 1 CME API documentation located at <http://api.nccpa.net/help>. NCCPA may release subsequent versions of the Category 1 CME API and require Partner to obtain and use the most recent

version. New versions may not be compatible with a previous version used by Partner. NCCPA will identify release versions at <http://api.nccpa.net/help>.

- (b) In accordance with the terms of this Agreement, Partner may have access to all or part of the Category 1 CME API and certain NCCPA Data, and Partner may provide certain Partner Data to NCCPA. This Agreement documents the terms and conditions under which: (i) NCCPA will license NCCPA Data to Partner and provide Partner a right to access the Category 1 CME API; and (ii) Partner will license Partner Data to NCCPA.

### **3. FEES AND PAYMENT TERMS**

#### **3.1 Compensation**

In consideration of NCCPA's costs and labor to establish and maintain an initial 30-day Sandbox Category 1 CME API and to maintain the production Category 1 CME API, Partner shall pay NCCPA a one-time fee of \$2,000.00 and an annual fee of \$5,000.00. NCCPA will provide twenty (20) API technology support hours per year and Partner shall pay NCCPA \$135.00 per hour for any additional technology support hours.

#### **3.2 Payment Terms**

NCCPA will invoice Partner within thirty (30) days of the Effective Date for the \$2,000.00 one-time fee and the initial \$5,000 annual fee and monthly for any additional API technology support hours. Partner shall pay the invoiced amount within thirty (30) days of the date of the invoice. NCCPA reserves the right to terminate the Partner's access to the Category 1 CME API after ninety (90) days of non-payment.

NCCPA will invoice Partner for its annual fee for each subsequent annual term thirty (30) days prior to the anniversary of the Effective Date. NCCPA may modify its fees for any upcoming renewal term by providing Partner with sixty (60) days written notice prior to the start of such renewal term. Partner may elect to continue access to the Category 1 CME API by submitting payment of the renewal invoice; if Partner does not submit payment prior to the start of the renewal term, this Agreement, and Partner's access to the Category 1 CME API will terminate at the end of the then-current Term.

### **4. NCCPA OBLIGATIONS**

- (a) All services shall be performed by NCCPA in a competent, timely, and professional manner by NCCPA employees and contractors that have the requisite expertise and proper skill, training and background.
- (b) Partners shall contact NCCPA for API technology support by sending an e-mail to [apisupport@nccpa.net](mailto:apisupport@nccpa.net). NCCPA will provide API technology support during NCCPA Office Hours, with the exception of NCCPA holidays. NCCPA Office Hours are from 8:30 a.m. to 5:00 p.m. EST, Monday through Friday. Any API

technology support requests sent to NCCPA after Office Hours will be addressed as soon as possible the next day that NCCPA is open for business.

## **5. NCCPA DATA**

### **5.1 Ownership of NCCPA Data.**

As between the Parties, NCCPA Data will be and remain the sole property of NCCPA regardless of whether it has been processed by Partner or is in Partner's possession or control. Subject to Section 5.3, Partner will access NCCPA Data only as necessary and for no other purpose than for Partner to perform its obligations under this Agreement. NCCPA Data will be made available promptly to Partner, upon its request, in the form and format reasonably requested by Partner. No NCCPA Data may be sold, assigned, leased, or otherwise disposed of to third parties or commercially exploited by or on behalf of Partner (or its Affiliates or any subcontractors). Neither Partner nor any of its Affiliates or subcontractors may possess or assert any lien or other right against or to any NCCPA Data.

### **5.2 License to NCCPA Data.**

NCCPA hereby grants to Partner a limited, non-exclusive, non-transferable license to access and use the Category 1 CME API during the Term of this Agreement solely for the purposes of accessing NCCPA Data provided through the Category 1 CME API as described in Section 2. Upon expiration or termination of this Agreement, this license shall automatically terminate without further action on NCCPA's part, and Partner will no longer have the right to use or access the Category 1 CME API or NCCPA Data.

### **5.3 Restrictions on the Use of NCCPA Data.**

Without limiting its obligations elsewhere in this Agreement, Partner's right to access the Category 1 CME API and use any NCCPA Data is subject to the following:

- (a) To the extent Partner has access to the Category 1 CME API, all calls to the Category 1 CME API must reference an access token that is retrieved by authenticating to NCCPA's token endpoint using the private client ID and client secret that is issued to Partner as an approved licensee;
- (b) Subject to the provisions of this Section 5 and Section 9, Partner will provide the NCCPA Data to users on "as is" terms and in a manner that is consistent with the terms of this Agreement;
- (c) Partner may not share any NCCPA Data with any third party (including any Partner Affiliates) without NCCPA's prior written consent;
- (d) Partner may present the NCCPA Data only on a transactional basis and may not permit users to access any NCCPA Data in bulk;
- (e) Partner may not retain any copies of the NCCPA Data, and Partner's use of NCCPA Data is limited to making direct server calls to NCCPA for the Lookup List Data and to distributing the NCCPA Data to Partner's end users on its website(s) or mobile applications, immediately upon receipt by Partner's servers;

- (f) Partner may not present the NCCPA Data (or permit the NCCPA Data to be presented) so that it appears to be available from a third-party website;
- (g) Partner may not use the NCCPA Data for direct marketing (i.e., mailing) or telemarketing lists;
- (h) Partner may not separately extract and provide or otherwise use data elements from the NCCPA Data to enhance the data files of third parties;
- (i) Partner may not otherwise reproduce, modify, distribute, decompile, disassemble or reverse engineer any portion of the Category 1 CME API or any data provided by NCCPA; and
- (j) Partner may only use a non-production testing environment (“Sandbox Category 1 CME API”) provided by NCCPA for testing Services that utilize NCCPA Data.

## **6. SANDBOX AND PRODUCTION API**

### **(a) Initial Access to the Sandbox Category 1 CME API.**

After this Agreement is fully executed, NCCPA shall provide the Partner with initial access to the Sandbox Category 1 CME API. Partner’s access to the Sandbox Category 1 CME API will be active for thirty (30) days, beginning on the date the set up information is emailed to the Partner. Access will be disabled on the 31<sup>st</sup> day unless the Partner and NCCPA agree to subsequent access pursuant to Section 6(b) before the thirty (30) day time period has expired.

### **(b) Subsequent Access to the Sandbox Category 1 CME API.**

Partner may submit a written request to reactivate access to the Sandbox Category 1 CME API after access has expired. NCCPA will review the request and, if acceptable to NCCPA, draft a Statement of Work (“SOW”) that extends the Partner’s Sandbox access. Once the SOW is signed by both Parties and effective, NCCPA will reactivate access to the Sandbox Category 1 CME API. Partner’s access to the Sandbox Category 1 CME API will be active for the term agreed to in the SOW. Access will be disabled on the day after the SOW’s term end date unless the Partner requests NCCPA draft another SOW that extends the Partner’s Sandbox access, and such request is approved by NCCPA and the SOW is signed by both Parties and effective before the preceding SOW’s term end date.

(c) Any initial solution that uses Category 1 CME API that is developed by Partner must first be approved by NCCPA before being released for use. Since test data is not supported in NCCPA’s production environment, all testing must be performed by the Partner in the Sandbox environment. After the Partner has finished using a Sandbox Category 1 CME API for development and testing, the Partner shall send an email to [api@nccpa.net](mailto:api@nccpa.net) in order to request NCCPA’s approval to release their solution with Category 1 CME API integration to production. The email will include screenshots and description of Partner’s solution. NCCPA will respond with either approval or required

changes. Once approved, NCCPA shall establish a production Category 1 CME API. After the production API is established, the Partner may release their solution to production.

(d) Any new or modified solution that uses Category 1 CME API that is developed by Partner must be first approved by NCCPA before being released for use. The Partner shall send an e-mail to [api@nccpa.net](mailto:api@nccpa.net) in order to request NCCPA's approval to release their solution with Category 1 CME API integration to production. The email will include screenshots and description of Partner's solution. NCCPA will respond with either approval or required changes. Once approved, Partner may release their solution to production.

## **7. PARTNER OBLIGATIONS**

- (a) Where Partner discovers or is notified that it has received NCCPA Data that it is not authorized to receive under the terms of this Agreement, Partner shall not use such NCCPA Data and shall immediately: (i) report the receipt of such NCCPA Data to NCCPA; (ii) use commercially reasonable efforts to delete such NCCPA Data from its systems and destroy any hard copies thereof; and (iii) cooperate with NCCPA as requested to mitigate any damages arising from or related to the receipt of such NCCPA Data.
- (b) NCCPA will email Partner an invitation token link to set up the user account and access the Category 1 CME API. Partner shall be responsible for any use of its user ID and password, whether or not authorized by Partner, except for misuse or failure to follow commercially reasonable security standards by NCCPA or its subcontractors.
- (c) Partner shall be responsible for maintaining all computer hardware, software and Internet connections (public or private) required by Partner to access the Category 1 CME API.
- (d) Partner personnel may only access and distribute NCCPA Data pursuant to the rights set forth in this Agreement. To the extent permitted by its rights under this Agreement, Partner may distribute NCCPA Data through its own applications, services, or end user facing Internet websites(s) to its customers, partners, or other third parties in order to facilitate the use of the Database in accordance with this Agreement.
- (e) Subject to Section 14(h), to the extent Partner creates any Internet links to NCCPA's website from Partner's own website, all such links shall include NCCPA's designated logo, and shall be in a form approved by, and reasonably acceptable to, NCCPA. Use of NCCPA's name, logo, and any applicable trademarks ("NCCPA Brand and Links") shall be subject to NCCPA's API Branding Requirements, which NCCPA will provide to the Partner. Upon NCCPA's approval of Partner's use of NCCPA Brand and Links, the license provided in Section 5.2 shall extend to such NCCPA Brand and Links and be subject to the same rights and restrictions, including with respect to termination.

## **8. PARTNER DATA**

### **8.1 License Grant.**

Partner hereby grants to NCCPA, commencing on the Effective Date, a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license for NCCPA to use, reproduce, maintain, modify, and display the Partner Data in the ordinary course of NCCPA's business. Furthermore, NCCPA may incorporate Partner Data into the Database to further NCCPA's business. NCCPA may make a reasonable number of copies of the Partner Data for archival and back-up purposes. Except as permitted under this Agreement, NCCPA may not resell Partner Data as a stand-alone product to a third party.

### **8.2 Service Partners.**

NCCPA may grant any person or entity that provides services to NCCPA, including outsourcing vendors, contractors, and consultants ("Service Partners"), the right to use Partner Data solely for the benefit of NCCPA. NCCPA will require each such Service Partner to execute an agreement containing confidentiality protections substantially equivalent to those provided in this Agreement.

### **8.3 Ownership of Partner Data.**

Except for the rights granted to NCCPA in this Agreement, Partner shall retain all right, title, and interest in the Partner Data.

### **8.4 Delivery and Format of Partner Data.**

Partner shall provide all Partner Data to NCCPA in the method of delivery reasonably requested by NCCPA and in the format reasonably requested by NCCPA.

## **9. CONFIDENTIALITY AND DATA SECURITY**

### **9.1 Confidential Information.**

"Confidential Information" of a Party shall mean (a) all information about or belonging to the disclosing Party or a third party that is disclosed or otherwise becomes known to the receiving Party in connection with the negotiation or performance of this Agreement, in whatever form (whether tangible, intangible, electronic, oral or otherwise), whether disclosed before or after the Effective Date, and whether or not marked or otherwise designated as confidential; (b) all trade secrets, customer information and intellectual property owned or licensed by the disclosing Party; (c) all Personal Information about individuals contained in the disclosing Party's records or other information relating to such Party's employees, contractors, or customers which, if released, would cause an unlawful or actionable invasion of privacy; (d) all other confidential, proprietary or trade secret information disclosed by such Party, which a reasonable person employed in the healthcare industry or with technology experience would recognize as such; and (e) any compilation or summary of information or data that is itself Confidential Information. For the avoidance of doubt, NCCPA Confidential Information shall include information relating

to NCCPA's PAs, customers, potential customers, suppliers, financial and business information, technological information, specifications, business and product plans.

## 9.2 Protection of Confidential Information.

As between the Parties, all Confidential Information disclosed by or on behalf of one Party to the other in the course of performing under this Agreement or to which the other gains access in connection with this Agreement shall be deemed to be the property of the disclosing Party. The receiving Party agrees to (a) receive such Confidential Information in confidence; (b) use reasonable efforts to maintain the confidentiality of such Confidential Information and not disclose such Confidential Information to third parties (except for the receiving Party's representatives, agents, contractors, and professional advisors who have a need to know, are under a duty of non-disclosure with respect to such information, and are acting for the sole benefit of the receiving Party), which efforts shall accord such Confidential Information at least the same level of protection against unauthorized use and disclosure that the receiving Party customarily accords to its own information of a similar nature; (c) use or permit the use of such Confidential Information solely in accordance with the terms of this Agreement; and (d) promptly notify the disclosing Party in writing of any actual or suspected loss or unauthorized use, disclosure or access of the disclosing Party's Confidential Information of which it becomes aware. The terms and conditions of this Agreement (as well as all information regarding the negotiation of this Agreement) shall be deemed to be the Confidential Information of both Parties. Each Party agrees that it shall abide by and reproduce and not remove any restrictive legend or proprietary rights notice that appears in or on any Confidential Information of the other Party or any third party that it is authorized to reproduce. Each Party also agrees that it shall not remove, alter, cover or distort any trademark, trade name, copyright or other proprietary rights notices, legends, symbols or labels appearing on or in any Confidential Information of the other Party or any third party.

## 9.3 Exclusions.

The restrictions on use and disclosure set forth above shall not apply when, and to the extent that the Confidential Information: (a) is or becomes generally available to the public through no fault of the receiving Party (or anyone acting on its behalf); (b) was previously rightfully known to the receiving Party free of any obligation to keep it confidential; (c) is subsequently disclosed to the receiving Party by a third party who may rightfully transfer and disclose such information without restriction and free of any obligation to keep it confidential; (d) is independently developed by the receiving Party or a third party without reference to the disclosing Party's Confidential Information; or (e) is required to be disclosed by the receiving Party as a matter of law, provided that the receiving Party uses all reasonable efforts to provide the disclosing Party with at least ten (10) days' prior notice of such disclosure and the receiving Party discloses only that portion of the Confidential Information that is legally required to be furnished pursuant to the opinion of legal counsel of the receiving Party.

## 9.4 Additional Obligations Regarding Personal Information.

"Personal Information" means any information that, either individually or when combined with other information, could be used to distinguish or trace an individual's identity, such as their name, address, telephone number, social security number, date and place of birth,

mother's maiden name, or account information. As between the Parties, all Personal Information disclosed or otherwise made available to Partner by or on behalf of NCCPA will be considered NCCPA's property and NCCPA's Confidential Information. Partner will restrict access to NCCPA Personal Information on a strict need-to-know basis. Partner will not disclose NCCPA Personal Information to any third party (including Partner's agents and contractors), nor permit any third party to have access to any NCCPA Personal Information for any purpose except as required by Law, or as necessary to perform its obligations under this Agreement in accordance with applicable Laws. Partner may not use, duplicate or retain records of NCCPA Personal Information, except as necessary to perform its obligations under this Agreement. Each Party will be responsible at its own expense for complying with all applicable Laws relating to Personal Information and Confidential Information.

#### 9.5 Information Security.

Partner will establish, implement and maintain a comprehensive system of safeguards against the destruction, loss, alteration and unauthorized access and use of NCCPA Data in the possession or control of Partner (or its subcontractors, as applicable), and for its proper return to NCCPA or disposal, that meets (or exceeds) and complies with (a) applicable Laws, including all Laws relating to data protection and information security; (b) applicable prevailing industry information security practices and standards; and (c) any NCCPA information security requirements or policies provided by NCCPA. Partner will, and will require its agents and contractors to, regularly test key controls, systems and procedures relating to information security. Partner will provide NCCPA with the executive summaries of security assessments and penetration tests upon NCCPA's written request, and will promptly remediate any identified material deficiencies. Partner will notify NCCPA promptly, and in no event later than seventy-two (72) hours after becoming aware of, any known or reasonably suspected unauthorized use, access, loss, disclosure, modification, or destruction of NCCPA Data (each, a "Security Breach"). Partner will promptly investigate each Security Breach, provide NCCPA with a detailed written statement describing the circumstances surrounding each Security Breach, develop and provide a proposed remediation plan to address the Security Breach and prevent any further incidents and implement the proposed remediation plan promptly, in accordance with its security protocols and in good faith cooperation with NCCPA. Partner will at its expense take all necessary or customary measures to mitigate the harmful effects of any Security Breach, including by notifying affected individuals whose Personal Information has been disclosed or compromised if reasonably requested by NCCPA or required by Law.

#### 9.6 Ownership of Confidential Information.

Nothing contained in this Section 9 shall be construed as (a) obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party; or (b) limiting or diminishing in any respect the scope of any licenses granted under this Agreement.

#### 9.7 Injunctive Relief.

Each Party acknowledges that a disclosing Party will be irreparably harmed if the receiving Party breaches or threatens to breach its obligations under this Agreement and that the

disclosing Party would not have an adequate remedy at law in the event of an actual or threatened violation by the receiving Party of such obligations. Therefore, the disclosing Party shall be entitled to seek an injunction or any appropriate decree of specific performance from the court for any actual or threatened violations of this Agreement.

9.8 Return or Destruction.

As requested by the disclosing Party during the Term or upon the termination of the Agreement in accordance with Section 10, the receiving Party will return or, at the disclosing Party's election, destroy copies of any designated Confidential Information. When Confidential Information is no longer required for the receiving Party's performance under the Agreement, or in any event upon expiration or termination of the Agreement, the receiving Party will return all materials in any medium that contain, refer to, or relate to Confidential Information or, at the disclosing Party's election, destroy them. At the disclosing Party's request, the receiving Party will certify in writing that it has returned or destroyed all copies of Confidential Information in the possession or control of the receiving Party or any of its Affiliates or contractors.

9.9 Duration of Confidentiality Obligations.

The receiving Party's obligations under this Section 9 apply to Confidential Information, whether disclosed to the disclosing Party before or after the Effective Date and will continue during the Term and survive the expiration or termination of this Agreement.

**10. TERM AND TERMINATION**

10.1 Term.

The term of this Agreement ("Term") will commence on the Effective Date and will continue in effect for one (1) year. Partner may elect to continue this Agreement for successive one (1) year renewal terms by timely payment of NCCPA's applicable renewal invoice in accordance with Section 3.2. If Partner does not submit payment prior to the start of the next renewal term, this Agreement will terminate automatically at the end of the then-current Term without further notice. If NCCPA modifies its fees, NCCPA shall provide at least sixty (60) days' notice prior to the anniversary of the Effective Date.

10.2 Cancellation Refund

Partner may cancel the Agreement within the first thirty (30) days of service by providing written notice to NCCPA; in the event of such cancellation, NCCPA will issue a refund of the total payment minus \$2,000 for the cost of initial setup.

Access to the Category 1 CME API will be terminated within ten (10) business days after receipt of a cancellation request.

10.3 Termination for Cause.

Either Party may terminate this Agreement if the other Party materially breaches any of its terms and fails to cure such breach within thirty (30) days after receiving written notice of such breach. With respect to a breach of the Agreement by Partner, NCCPA

may suspend Partner's access and/or use of the Category 1 CME API and Database during such cure period.

10.4 Termination for Convenience.

Either Party may terminate this Agreement for convenience by providing the other Party with at least thirty (30) days' written notice. Partner shall not be entitled to any refund if it terminates the Agreement for convenience (except as provided in Section 10.2).

**11. WARRANTIES**

11.1 Authorization.

Each Party represents, warrants, and covenants to the other Party that (a) it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; (b) it has obtained all necessary licenses and permits to perform its obligations under this Agreement; (c) the performance obligations described in this Agreement do not conflict with any other agreement either signed or contemplated by such Party; and (d) it will comply with all laws and regulatory requirements applicable to its performance obligations under this Agreement.

11.2 Ownership and Non-Infringement.

Partner represents and warrants that it is either the owner or licensor of the Partner Data and has the right to provide the Partner Data, and the license to the Partner Data described in Section 8, to NCCPA. Partner further warrants that no Partner Data or other materials provided by Partner under this Agreement, nor the possession or use of any of the foregoing by NCCPA as contemplated by this Agreement, will infringe any Intellectual Property Right of a third party or contain confidential or proprietary material misappropriated by Partner from a third party. Partner further represents and warrants that it has all necessary permissions, consents or other valid legal basis to transfer any Personal Information contained in the Partner Data to NCCPA, that NCCPA is able to lawfully process any such Personal Information shared with it by Partner and that Partner will not cause NCCPA to be in breach of any Laws in providing such Personal Information to NCCPA.

11.3 Viruses.

Partner represents and warrants that it will use its best efforts to ensure Partner Data provided to NCCPA is free from any Viruses. If a Virus is found to have been introduced into NCCPA's systems as a result of a breach of the foregoing warranty, Partner will use best efforts, at no charge, to assist NCCPA in eradicating the Virus and reversing its effects and, if the Virus causes a loss of data or operational efficiency, to assist NCCPA in mitigating and reversing such losses. Partner warrants that it will not insert into NCCPA's systems any code that would have the effect of disabling, shutting down, or otherwise disrupting all or any portion of the IT systems of NCCPA.

11.4 Warranty Disclaimer.

OTHER THAN AS PROVIDED IN THIS AGREEMENT, THERE ARE NO EXPRESS WARRANTIES AND THERE ARE NO IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE. ACCESS TO THE CATEGORY 1 CME API, DATABASE AND NCCPA DATA IS PROVIDED “AS IS”, “WITH ALL FAULTS” AND “AS AVAILABLE”, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WITH RESPECT TO THE CATEGORY 1 CME API, DATABASE AND NCCPA DATA IS WITH PARTNER.

## **12. INDEMNITIES**

### **12.1 Partner Indemnities.**

Partner shall indemnify, defend, and hold harmless NCCPA, its Affiliates, Service Partners, and customers, and their respective officers, directors, employees, agents, successors and assigns, from any and all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties), arising from or in connection with any third-party claim based on allegations which, if proven, would constitute (a) a breach of a warranty under Section 11.1 (Authorization) or Section 11.2 (Ownership and Non-Infringement) above; (b) the negligence or willful misconduct of Partner, its parent, subsidiaries, affiliates or assigns and their respective directors, officers, employees and agents; (c) a breach of Partner’s obligations in Section 9 (Confidentiality and Data Security); or (d) a breach of Partner’s obligations in Section 14(c) (Compliance with Laws).

### **12.2 Additional Indemnities.**

Each Party shall indemnify, defend, and hold harmless the other Party and the other Party’s Affiliates, Service Partners, and customers, and their respective officers, directors, employees, agents, successors and assigns, from any and all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties), arising from or in connection with any of the following: (a) the death or bodily injury of any person caused by the tortious conduct of the indemnitor; or (b) the damage, loss or destruction of any real or tangible personal property caused by the tortious conduct of the indemnitor.

### **12.3 Indemnification Procedures.**

With respect to third party claims, the following procedures shall apply:

- (a) Promptly after receipt by any entity entitled to indemnification under this Section 12 of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee will seek indemnification pursuant to any such Section, the indemnitee shall notify the indemnitor of such claim in writing. No failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the indemnitee relating to any claim, the indemnitor shall notify the indemnitee in writing if the indemnitor elects to assume control of the defense and settlement of

that claim (a “Notice of Election”). If the indemnitor delivers a Notice of Election, the indemnitee shall reasonably cooperate with the indemnitor in the defense and settlement of the claim.

- (b) If the indemnitor delivers a Notice of Election relating to any claim within the required notice period, the indemnitor shall be entitled to have sole control over the defense and settlement of such claim; provided that (i) the indemnitee shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim, and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim or ceasing to defend against such claim. After the indemnitor has delivered a Notice of Election relating to any claim in accordance with the preceding paragraph, the indemnitor shall not be liable to the indemnitee for any legal expenses incurred by the indemnitee in connection with the defense of that claim. In addition, the indemnitor shall not be required to indemnify the indemnitee for any amount paid or payable by the indemnitee in the settlement of any claim for which the indemnitor has delivered a timely Notice of Election if such amount was agreed to without the written consent of the indemnitor.
- (c) If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitee shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the indemnitor. The indemnitor shall promptly reimburse the indemnitee for all such costs and expenses.

### **13. LIMITATION OF LIABILITY**

#### **13.1 Limitations.**

NCCPA shall not be liable under this Agreement for penalties or for direct, special, indirect, consequential or incidental losses or damages, including lost profits and lost revenues, regardless of whether any such losses or damages are characterized as arising from breach of contract, breach of warranty, tort, strict liability or otherwise, even if NCCPA is advised of the possibility of such losses or damages, or if such losses or damages are foreseeable. Partner’s sole and exclusive remedy with respect to a material breach by NCCPA is Partner’s right to terminate this Agreement in accordance with Section 10.3.

#### **13.2 Force Majeure.**

Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement: (a) if and to the extent such default or delay is caused by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, war, terrorism, rebellions or revolutions in any country, or any other similar cause beyond the reasonable control of such Party; and (b) provided the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. The affected Party will promptly notify the other Party of the circumstances causing its delay or failure

to perform and of its plans and efforts to implement a work-around solution. For as long as such circumstances prevail, the Party whose performance is delayed or hindered will continue to use all commercially reasonable efforts to recommence performance without delay.

#### 14. GENERAL

- (a) Assignment. Partner may not assign or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of NCCPA, which consent shall not be unreasonably withheld, conditioned or delayed. For avoidance of doubt, NCCPA (and its permitted successors and assigns) may assign the license described in Section 8 in connection with any permitted assignment of this Agreement. Any assignment or transfer in violation of this Section is void. Subject to the foregoing, this Agreement shall be binding upon the successors and assigns of each Party.
- (b) Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Georgia, without regard to any provision that would require or permit the application of the substantive law of any other jurisdiction. This Agreement is not governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is expressly excluded. The Parties consent to the nonexclusive jurisdiction of the state and federal courts serving Fulton County, Georgia. The Parties further consent to the jurisdiction of any state court located within a district that encompasses assets of a Party against which a judgment has been rendered for the enforcement of such judgment against the assets of such Party. The Parties consent to venue in Fulton County, Georgia. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.
- (c) Compliance with Laws. Each Party agrees at its cost and expense to obtain all necessary regulatory approvals applicable to its business, to obtain any necessary licenses or permits for its business, and to comply with all Laws applicable to its business (or that of its Affiliates) or the performance of its obligations under the Agreement. Without limiting the generality of the foregoing, both Parties agree to comply fully with all relevant export Laws of the United States to ensure that no information or technical data provided pursuant to this Agreement is exported or re-exported directly or indirectly in violation of Law.
- (d) Affiliates. References and grants of rights to NCCPA or Partner in this Agreement shall be deemed to be references and grants to NCCPA and its Affiliates or Partner and its Affiliates, as appropriate.
- (e) Relationship. Partner is performing its obligations under this Agreement as an independent contractor. Nothing in this Agreement shall constitute a partnership

between or joint venture by the Parties. Partner is not an agent of NCCPA and has no authority to represent NCCPA as to any matters.

- (f) No Waiver of Default. No waiver will be effective unless in a writing signed by an authorized representative of the Party against which enforcement of the waiver is sought. Neither the failure of either Party to exercise any right of termination, nor the waiver of any default will constitute a waiver of the rights granted in this Agreement with respect to any subsequent or other default.
- (g) Remedies Cumulative. All remedies specified in this Agreement will be cumulative and in addition to any other remedies available under this Agreement or at law or in equity.
- (h) Publicity. Neither Party may announce or release any information regarding this Agreement or its relationship with the other Party without such Party's express prior written approval (which may be withheld in such Party's sole discretion). Neither Party shall use any trade name, trademark, service mark or any other information which identifies the other Party in the Party's sales, marketing and publicity activities, including postings to the Internet, interviews with representatives of any written publication, television station or network, or radio station or network without such Party's express prior written approval. Partner shall send a publicity request to NCCPA by sending an e-mail to [api@nccpa.net](mailto:api@nccpa.net).
- (i) Notices. All notices, requests and demands, other than routine communications under this Agreement, will be in writing and will be deemed to have been duly given when delivered, or when transmitted by electronic mail (with a copy provided by another means specified in this Section 14(i)), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and addressed to a point of contact designated by the other Party (and copying the other Party's legal department). Either Party may from time to time change the individual(s) to receive notices under this paragraph and its address for notification purposes by giving the other prior written notice of the new individual(s) and address and the date upon which the change will become effective.
- (j) Interpretation. Unless the context otherwise requires, words importing the singular include the plural and vice-versa, and words importing gender include all genders. References to sections and paragraphs shall be references to sections and paragraphs of this Agreement, unless otherwise specifically stated. The section headings in this Agreement are intended to be for reference purposes only and shall in no way be construed to modify or restrict any of the terms or provisions of this Agreement.
- (k) Counterparts. The Agreement may be executed in writing or electronically in one or more counterparts, each of which will be deemed to be an original, but all of which will together constitute one and the same agreement.
- (l) Severability. If any provision of this Agreement is held invalid by a court with jurisdiction over the Parties to this Agreement, such provision will be deemed to be

restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and the remainder of this Agreement will remain in full force and effect.

- (m) Third Party Beneficiaries. The Agreement is entered into solely between NCCPA and Partner and, except for the Parties' indemnification obligations under Section 12, will not be deemed to create any rights in any third parties or to create any obligations of either NCCPA or Partner to any third parties.
- (n) Survival. Any provision of this Agreement which contemplates performance subsequent to any termination or expiration of this Agreement will survive any termination or expiration of this Agreement and continue in full force and effect. Further, all perpetual licenses granted under this Agreement shall survive the termination of this Agreement for any reason.
- (o) Entire Agreement; Amendments. This Agreement contains the entire agreement of the Parties and supersedes all prior agreements and representations, whether written or oral, with respect to the subject matter of this Agreement as of the Effective Date. Modification or amendment of this Agreement by Partner may be made only by a written instrument executed by authorized representatives of both Parties. NCCPA reserves the right to modify this Agreement; provided that NCCPA will notify Partner of any such changes; in such an event, Partner may terminate the Agreement by providing NCCPA with written notice within thirty (30) days after NCCPA notifies Partner of such changes. Partner's continued use of the Category 1 CME API, Database and/or NCCPA Data after such period will constitute acceptance of and agreement to any such changes.

**IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THE SIGNATURES OF THEIR AUTHORIZED REPRESENTATIVES BELOW. SUCH EXECUTION MAY BE EVIDENCED BY ELECTRONIC TRANSMISSION OF THE SIGNED AGREEMENT.**

**PARTNER**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**NCCPA**

\_\_\_\_\_  
By: Dawn Morton-Rias  
Title: President/CEO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **EXHIBIT 1 – GLOSSARY**

“Affiliate” means, with respect to any entity, any other present or future entity which, directly or through one or more intermediaries, Controls, is Controlled by or is under common Control with such entity or its successors.

“Control” and its derivatives means with respect to any entity either: (a) the ability to direct the management or policies of such entity, or (b) the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) ordinarily having voting rights of such entity.

“Including” and its derivatives (such as “include” and “includes”) means including without limitation. This term is as defined, whether or not capitalized in the Agreement.

“Intellectual Property Rights” shall mean, on a worldwide basis, any and all: (a) rights associated with works of authorship, including copyrights, moral rights and mask-works; (b) trademarks, service marks, trade names, trade dress, symbols, logos, designs, and other source identifiers; (c) trade secret rights; (d) patents, designs, algorithms and other industrial property rights; (e) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (f) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

“Law” means any statute, regulation, ordinance, rule, order, decree or governmental requirement enacted, promulgated or imposed by any governmental authority at any level (e.g., municipal, local, county, province, commonwealth, state, or national) of the United States and any other applicable country.

“NCCPA Data” means all data and information regarding NCCPA, its customers and suppliers that is either: (a) furnished, disclosed or otherwise made available to Partner, directly or indirectly, by or on behalf of NCCPA pursuant to this Agreement; or (b) collected or created by Partner on behalf of NCCPA in the course of performing its obligations under this Agreement. For clarity, NCCPA Data includes Lookup List Data and Category 1 CME Data.

“Partner Data” means all data and information regarding Partner, its customers and suppliers that is either: (a) furnished, disclosed or otherwise made available to NCCPA, directly or indirectly, by or on behalf of Partner pursuant to this Agreement; or (b) collected or created by NCCPA on behalf of Partner in the course of performing its obligations under this Agreement.

“Personal Information” has the meaning given to it in Section 9.4 of this Agreement.

“Virus” means (a) program code or programming instructions intentionally designed to disrupt, disable, harm, interfere with or otherwise adversely affect computer programs, data files or operations; or (b) other code typically described as malicious code or a virus, or by similar terms, including Trojan horse, worm, and backdoor.