



TriTech Software Systems
9477 Waples Street, Ste. 100
San Diego, CA 92121
Phone: 858.799.7000
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www.tritech.com

Subscription Service License & Use Agreement TriTech.com Billing (Online)

I. ASP License and Use Agreement.

This Application Service Provider ("ASP") Agreement is made by and between, TriTech Software Systems, (hereinafter referred to as "TriTech") and the client named on the signature page attached hereto ("Client") as of the date that the quote accompanying this Agreement is executed by an authorized representative of both TriTech and the Client. TriTech and Client may also be referred to herein individually as "Party", or collectively as the "Parties".

II. Services; Software.

- A. Under the terms of this Agreement, TriTech will be responsible for providing the following services ("Services"):
- (i) Hosting TriTech's software ("Software") for its TriTech.com Billing online program and corresponding modules as indicated on the Sales Order attached hereto as Addendum 2;
 - (ii) Providing the Client with technical support for the Software as set forth in Schedule A ("Technical Support"), database hosting and other related services as further defined in the Sales Order;
 - (iii) Providing the Client with remote access to the Software and the applicable database(s) for Authorized Users (as defined in Section III (B) hereof) for 24 hours per day, 7 days per week, except as otherwise provided at Schedule A hereto with respect to scheduled maintenance; and further provided, that TriTech shall not be responsible for connectivity issues due to an event of Force Majeure, as defined in paragraph B below;
 - (iv) Providing the Client with certain user manuals and/or on-line Software education or other information on the TriTech Web site to assist Client with its use of the Software ("Documentation");
 - (v) Enabling Client to update the applicable databases and obtain the agreed upon data processing output;
 - (vi) Providing any other Software related services stated in the Sales Order (together, the "Subscription Services"). Schedule A and any Documentation may be updated by TriTech from time to time in its sole discretion upon written notice to Client;
 - (vii) Providing the Client with initial training as stated in the Sales Order; and
 - (viii) Populating the Software and the associated database(s) with Client Information (as defined in Section VII (B) hereof) and otherwise assist Client with the set-up of the Software (together, the "Implementation Services").
 - (ix) If applicable, TriTech and Client shall mutually agree in writing on a schedule for transfer of data from Client's existing system to TriTech.com Billing.

- B. Force Majeure. TriTech shall not be responsible for delays in performance, including connectivity issues, due to disruption of internet services, war, acts of terrorism, strike, fire, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, unavailability of equipment or software from suppliers, the actions or omissions of Client or its officers, directors, employees, agents, contractors or elected officials and/or other similar occurrences beyond TriTech's reasonable control.
- C. Notwithstanding anything in this Agreement or any understanding of the parties to the contrary, TriTech shall not be responsible for the following: (i) Submitting claims, bills or invoices to the Client's Medicare carrier or other payment source; (ii) Coding of claims or any other collection or billing-related activities; (iii) Proper documentation of claims, patient care reports or other documents; (iv) Reviewing claims for accuracy, proper completion, completeness, or propriety of submission for payment; (v) Submitting local, regional, state, or national data submissions; or (vi) the Client's own use of the Software, including, without limitation, entering Client Information into the Software.
- D. This Agreement allows Client to use the Software located on TriTech's servers to which Client will be granted limited remote access. Client shall not receive a physical copy of the Software in any form, but will have the ability to use the Software on TriTech's servers, and to access the Software remotely as directed by TriTech.

III. License; Access.

- A. Provided that Client has paid the applicable Fees (as defined in Section IV (A) hereof), TriTech grants to Client a limited non exclusive, non-transferable license to use the Subscription Services, including the Software located on TriTech's servers, through Client's computer(s) for Client's internal operational use only for the Term set forth in Section V unless otherwise agreed to by TriTech in writing, and TriTech shall perform the applicable Implementation Services for the Client. The Subscription Services may only be accessed by an Authorized User. Except for applicable billing services as stated on the Sales Order, Client is expressly prohibited from sublicensing, selling, renting, leasing, providing service bureau or timeshare services, distributing or otherwise making the Subscription Services or the Software available to third parties other than any third-party Authorized Users.
- B. For purposes of this Agreement, an "Authorized User" is an individual (i) who is an employee of Client, a contractor or other representative of Client and (ii) who has been properly issued a valid password that subsequently has not been deactivated.
- C. Access to the Subscription Services by Authorized Users is enabled only by passwords that TriTech supplies to Client for issuance to Authorized Users. Client is solely responsible for the management and control of those passwords and Authorized Users shall not be permitted to disclose or transfer a password to any third-party. Client shall assign a "Client Administrator" to provide such password management and control. Upon request by Client, additional Authorized Users' passwords shall be activated by TriTech.
- D. Client acknowledges (i) that the protection of passwords issued to Authorized Users is an integral part of TriTech's security and data protection process and procedures and, (ii) that TriTech will rely on Client utilizing and maintaining proper password control obligations and procedures. In the event that Client has reasonable cause to believe that a password is being improperly used by an Authorized User or used by an unauthorized person, Client shall promptly notify TriTech. TriTech reserves the right to deactivate a compromised password immediately upon notice from Client without further notice to Client or the affected Authorized User. TriTech shall have the right, at

its sole cost and expense, to utilize an independent certified accounting firm, to verify the number of passwords that have been issued for use by Authorized Users of the Client and use of these passwords within Client's organization in compliance with the terms of this Agreement.

- E. The number of Authorized Users having the ability to access the Subscription Services at any single moment in time shall be specified on the Sales Order.

IV. Fees; Payment; Taxes.

- A. As consideration for use of the Subscription Services and the Implementation Services during the initial contract term, Client shall pay those fees and charges set forth in the Sales Order (together, "Fees"), in accordance with the payment terms stated therein (annual or monthly). For annual fees, Client shall remit payment prior to the initial contract term, and each subsequent annual term in accordance with TriTech's invoice and Renewal Notice. For monthly Subscription Fees, Client agrees to allow TriTech to debit from its bank account(s) any and all fees due TriTech under this Agreement, if TriTech at its sole discretion chooses to do so. Failure to pay may result in suspension or termination of your account until payment is made. Fees shall remain in effect during the Initial Term. Thereafter, fees are subject to change upon each successive renewal which shall be mutually agreed and set forth in the Renewal Notice.
- B. As consideration for use of the Subscription Services during renewal contract terms, Client shall pay those fees and charges set forth in the Renewal Notice (together, "Fees").
- C. Except as stated in Section A above for Subscription Fees paid on an annual basis, fees for the Subscription Services are due monthly and shall be billed automatically on the 15th of each month as a direct debit from Client's bank account. All Fees (annual or monthly) are non-refundable for any reason.
- D. Fees for the Implementation Services are due thirty (30) days following the Effective Date set forth on the Sales Order and shall be billed automatically as a direct debit from Client's bank account, unless invoicing is specified. If invoicing is specified, then all fees and charges are payable upon receipt.
- E. Past due payments accrue late payment fees at one and one-half percent (1.5%) per month or the highest legally permissible late payment fee, as applicable.
- F. Any amounts payable pursuant to this Agreement are to be net to TriTech and shall not include taxes or other governmental charges or surcharges, if any. In addition to the fees and charges due to TriTech under this Agreement, Client shall remain liable for and shall pay all local, state, and federal sales, use, excise, personal property, or other similar taxes or duties, and all other taxes, which may now or hereafter be imposed upon this Agreement or possession or use of the Program, excluding taxes based on TriTech's income.
- G. For Clients paying Monthly subscription fees: Upon execution of this Agreement, Client shall provide to TriTech a duly signed ACH Debit Authorization Form providing TriTech with authority to directly debit a bank account belonging to Client which shall at all times have available credit (or debit balance) sufficient to pay the applicable fees and charges. In the event that the established bank account is closed or cancelled, Client agrees to immediately provide TriTech with a new duly signed ACH Debit Authorization Form for a new bank account containing sufficient funds. If Client fails to pay or TriTech is not able to directly debit funds in the manner described herein, the Client is in

violation of this Agreement. Client must make funds available for direct debit within five (5) business days. In the event of failure to pay, at TriTech's sole discretion, in addition to the Fees due, TriTech shall have the right to require an immediate deposit covering two (2) months of Fees (the "Deposit") to hold in reserve until expiration or termination of this Agreement. If Client fails to pay any amounts due, Client hereby authorizes TriTech to deduct any amounts due and owing to TriTech from the funds being held in Deposit. In addition, if at any time TriTech applies any funds from the Deposit toward amounts that are due and owing to it, Client agrees that, upon receipt of notice from TriTech of the applied amounts ("Notice of Amounts Applied from Deposit"), Client will promptly make payment to TriTech of the applied amounts ("Applied Amounts") in order to maintain the full two (2) months of Fees in Deposit as originally required.

V. Term and Termination; Suspension of Services.

- A. The initial term of this Agreement shall commence on the Effective Date as stated in the Sales Order and shall continue in full force and effect until the Expiration Date as stated in the Sales Order ("Initial Term") unless the Agreement is otherwise terminated as set forth herein. The Initial Term shall not be less than one (1) year, except as otherwise provided in this Section V.
- B. At the conclusion of the Initial Term, this Agreement shall renew for successive one (1) year terms, unless otherwise specified in the Sales Order (each a "Renewal Term"), unless one Party notifies the other Party in writing of its decision not to renew at least thirty (30) days prior to the end of the Initial Term or any Renewal Term. (The Initial Term and any Renewal Term collectively are referred to herein as the "Term").
 - i. This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of Santa Fe County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to TriTech. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse TriTech, other than for expenditures made in the performance of this Agreement up to the date of such termination. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by TriTech in any way or forum, including a lawsuit.
- C. Either Party may terminate this Agreement (i) immediately if the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, or (ii) immediately if the other party becomes the subject of an involuntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, and such petition or proceeding is not dismissed within sixty (60) days of filing.
- E. Client may terminate this Agreement if TriTech breaches any term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same.

- F. Client may terminate this Agreement for convenience following sixty (60) days prior written notice to TriTech. Client shall pay TriTech for all fees and expenses earned up to the date of termination.
- G. In addition to the circumstances as described in Subsection V(H) below, TriTech may terminate the Agreement at any time upon thirty (30) days prior written notice to the Client.
- H. If Client's scheduled Subscription Services payment or any other amount due and owing by Client to TriTech is delinquent, TriTech may, in its sole discretion, immediately terminate or suspend all or any portion of the Services forty-five (45) days after the date payment is due. If applicable, should TriTech elect to apply the Deposit toward any delinquent payment, TriTech shall provide written notice to Client. In the event services are suspended, any resumption of services shall be at TriTech's discretion as further defined in Section V (K) below.
- I. Upon the effective date of expiration or termination of this Agreement (i) TriTech will immediately cease providing Client with any Services it is providing and any other applicable component of the Services; (ii) all issued passwords shall be deactivated; (iii) Client immediately shall pay in full to TriTech any and all monies that are owed by the Client to TriTech under this Agreement for the Services furnished up to the effective date of the Agreement's termination or expiration; and (iv) if TriTech has not already applied any of the Deposit toward amounts that may be due and owing to it by the Client, TriTech agrees that it shall return to Client any amounts that may be remaining in the Deposit.
- J. Upon TriTech's reasonable belief that tortious or criminal or otherwise improper activity may be associated with Client's utilization of the Services, TriTech may, without incurring any liability, temporarily suspend or discontinue the Services pending investigation and resolution of the issue or issues involved.
- K. If all or any components of the Services have been terminated as a result of a breach by Client, or suspended as provided herein, and Client requests that all or any component of the Services be restored, TriTech has the sole and absolute discretion whether or not to restore such Services; and further, any such restoration shall be conditioned upon TriTech's receipt of all Fees due and owing hereunder, including if applicable, Fees required to maintain the required Deposit amount, or other such conditions as TriTech may reasonably determine are appropriate.
- L. In the event of expiration or termination of this Agreement for any reason, each Party shall promptly return to the other Party or destroy all copies of the other Party's Confidential Information (including notes and other derivative material) that it has received pursuant to Section VII hereof. In this respect, TriTech will send to Client a "detailed aged accounts receivable listing" within a reasonable period of time after termination or expiration of the Agreement and, upon instruction from Client within thirty (30) days of termination or expiration of the Agreement, either remove Client's data from TriTech's system, destroy such data and verify such removal and destruction in writing to Client; or send to Client an electronic copy of all information entered by Client into the Software (i.e. the Client's database) via CD-ROM, tape drive or other external media of TriTech's choosing. In the event that no instructions are provided by Client within such thirty (30) day timeframe, TriTech shall remove and destroy Client's data as defined above. The Client shall be responsible for installing its data on Client's computer system and maintaining the database in compliance with HIPAA (as defined in Addendum 1 hereto).

- M. Fees prepaid for the Initial Term or a Renewal Term are nonrefundable in the event of termination for any reason.
- N. Sections IV, V, VII, VIII, IX, X, XI, XII, XIII and XIV shall survive any termination of this Agreement, as well as any other obligations of the Parties that contemplate performance by a Party following the termination of this Agreement.

VI. Client Responsibilities.

- A. In conjunction with its obligation to participate in the Implementation Services, Client will assign personnel with the required skills and authority to perform the applicable tasks effectively and, further, will make best efforts to meet its obligation to supply information and otherwise assist as necessary to effect the commencement of the Subscription Services via the Implementation Services. Management of Client's responsibilities in conjunction with the Subscription Services after implementation shall be assigned to a Client Administrator who has attended training offered by TriTech to Client. The Client Administrator that the Client appoints may be replaced at any time in the sole discretion of the Client upon Client's written notice to TriTech so long as the newly appointed Client Administrator has attended TriTech's training. Client will be charged additional fees for any such training for Client's employees beyond the initial training for the Software that is a part of the Implementation Services.
- B. Client is responsible for providing hardware that meets TriTech's recommended hardware specifications, and remote connectivity.
- C. Client is solely responsible for the integrity of all data and information that is provided to TriTech under this Agreement (i.e., the Client Information), including completeness, accuracy, validity, authorization for use and integrity over time, regardless of form and format, and whether or not such data is used in conjunction with the Subscription Services. Further, it is solely Client's responsibility to assure that the initial and one-time importing of the Client Information into Client's database by TriTech has been properly performed, acknowledging that thereafter the completion of the initial set-up of all Code Files not already populated by TriTech and the input and modification of Client's database shall be performed solely by Client. The Client Information that is to be included in Client's database shall be provided by Client in a digital form that complies with the requirements of the Client Information format as stated in TriTech's policy for inputting Client Information in any Documentation TriTech provides to Client. In addition, Client is solely responsible for the accuracy of any and all reports, displays and/or uses of Client Information, whether or not TriTech assisted Client with the development or construction of such reports and displays and other uses of the Client Information.
- D. Client shall not attempt to decode, disassemble, copy, transmit, transfer or otherwise reverse engineer the Services, including, without limitation, the Software.
- E. Client is responsible for maintaining an active e-mail account for correspondence with TriTech.
- F. Client is responsible for performing patient and call data entry activities.
- G. Client is responsible for properly coding claims and properly documenting claims.
- H. Client is responsible for correcting data entry errors identified via the process of any Medicare Electronic Claim File generation or other comparable process.

- I. Client is responsible for generating all applicable paper copies of claims and information entered.
- J. Client is responsible for submitting all claims to the Medicare carrier or other payment source for payment.

VII. Confidentiality, Privacy and Business Associate Provisions.

- A. In association with the negotiation of this Agreement and TriTech's participation in the use and support of the Software, Client has obtained, will have access to, or will obtain confidential information regarding intellectual property of TriTech, the Software and its contents, sales and marketing plans and other similar information (hereinafter referred to as "Confidential Information"). Client acknowledges that the Software itself represents and embodies certain trade secrets and confidential information of TriTech. Client hereby agrees that, for itself and its shareholders, officers, directors, employees, and agents, Client shall not disclose any of TriTech's trade secrets or confidential information without TriTech's prior written consent for any such disclosure.
- B. In association with the negotiation of this Agreement and the participation of TriTech in the support of the Software, TriTech has obtained or will obtain confidential information of Client regarding the business of Client, Client Information for its utilization in connection with providing the Services to Client, the records of patients served by Client, accounts payable and accounts receivable of Client, trade secrets, customer lists, and other similar information. TriTech shall not disclose any of Client's confidential information without Client's prior written consent for any such disclosure. "Client Information" means confidential information about Client's business or its customers that (i) Client and/or its customers deliver to TriTech for use in its implementation of the Services, which Client subsequently updates and otherwise modifies, and (ii) TriTech hosts on services for access by and transmission to the Authorized Users via the Internet. TriTech shall not use any Client Information except as expressly set forth in this Agreement.
- C. In addition to TriTech's obligations regarding nondisclosure of Client Information set forth above, in the event that TriTech is a "Business Associate," and Client is a "Covered Entity" pursuant to 45 C.F.R. § 160.103, TriTech shall perform its obligations under this Agreement with respect to Protected Health Information ("PHI") as provided in Addendum 1 attached to this Agreement.
- D. Notwithstanding any provisions of this Agreement to the contrary, Client may terminate this Agreement if Client determines that TriTech has violated a material term of this Agreement with respect to its functions as a Business Associate in accordance with Addendum 1.
- E. Confidential Information other than PHI as defined in Addendum 1, shall not include any information that is (i) already known to the receiving Party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the receiving Party; (iii) subsequently disclosed to receiving Party on a non-confidential basis by a third party not having a confidential relationship with the other Party hereto that rightfully acquired such information; (iv) communicated to a third party by receiving Party with the express written consent of the other Party hereto; or (v) legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process, provided the receiving Party provides prompt notice of any such subpoena, order, etc. to the other Party so that such Party will have the opportunity to obtain a protective order.

- F. Each Party agrees to restrict access to the Confidential Information of the other Party to those employees or agents who require access in order to perform the Subscription Services, Implementation Services or Additional Services, acknowledging that certain Confidential Information of each Party may be disclosed to Authorized Users as a necessary function of the Subscription Services; and, except as otherwise provided, neither Party shall make Confidential Information available to any other person or entity without the prior written consent of the other Party.
- G. Notwithstanding the foregoing, Client understands and agrees that TriTech may transfer Confidential Information of Client to a third party hosting entity for the purposes of providing the communications infrastructure, hosting services and/or related support and other operations necessary to deliver all or certain portions of the Services; provided that TriTech, in turn, binds such third party to confidentiality and non-disclosure terms that are at least as protective of TriTech's and Client's interests as the terms stated herein. Client acknowledges that TriTech shall have no responsibility or liability for unauthorized access to or dissemination of Client Information by Authorized Users or other third parties, whether as a result of breach of data security, misappropriation, misuse of passwords or any other cause.

VIII. Ownership.

- A. TriTech owns all rights and title in and to the Services, including, without limitation, the Software, and any Developments, as that term is defined below. Further, Client agrees that the Subscription Services' screens and any output of the Services, excepting the Client Information, are the property of TriTech and subject to United States and other patent, copyright, trademark, trade secret and other applicable laws and treaties and Client agrees that it shall not remove, alter or obstruct any ownership or use legends that TriTech places on any such screens or output of the Services. Nothing contained in this Agreement shall be construed as granting Client any rights in or to the Subscription Services (including, without limitation, the Software and output of the Subscription Services), the deliverables from the Implementation or Additional Services or related Confidential Information, other than the right to use the Services and any applicable Confidential Information of TriTech during the Term, in accordance with this Agreement.

Client agrees that TriTech has and retains all rights to use any data and information relating to the Software and Services that it receives from Client including, without limitation, any information that constitutes, or results in, an improvement or other modification to the Software or the Services, but excluding the Client Information and PHI.

As between the parties, TriTech agrees that all Client Information provided to TriTech under this Agreement for TriTech's use in connection with the Subscription Services is the property of Client; provided, however, TriTech shall have the right to retain Client Information in accordance with its obligations under the terms of this Agreement in the event that the return or the destruction of any Client Information is infeasible.

The term "Developments" shall mean all programs, upgrades, updates or other enhancements or modifications to the programs, if any, and all Documentation or other materials developed and/or delivered by TriTech in the course of providing technical support or otherwise, under this Agreement.

- B. Client will not have the ability to copy the Client Information entered onto the Software. Rather, TriTech will retain an electronic copy of this Client Information as set forth herein. TriTech shall retain the physical copy of the Software, title, right and interest in

and to the Software, including upgrades, updates, and/or other enhancements or modifications to the Software in any medium, including but not limited to all copyrights, patents, trade secrets, trademarks, and other proprietary rights.

IX. Disclaimer; Limitation of Liability.

- A. THE SERVICES, SOFTWARE AND ANY DOCUMENTATION ARE MADE AVAILABLE FOR CLIENT'S USE "AS IS" AND EXCEPT AS OTHERWISE SPECIFICALLY STATED HEREIN, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- B. TRITECH DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR-FREE. CLIENT AGREES TO INDEMNIFY TRITECH AGAINST ANY SUCH LIABILITY TO CLIENT, REGARDING THE CLIENT'S USE OF THE SERVICES, THE SOFTWARE AND ANY DOCUMENTATION OR OTHERWISE. IN NO EVENT SHALL TRITECH BE LIABLE TO CLIENT OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT, OR OTHERWISE FOR INCIDENTAL, SPECIAL, INDIRECT, GENERAL, OR CONSEQUENTIAL DAMAGE OR LOSS OF ANY NATURE, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS PROFITS, INCOME, LOSS OR USE OF DATA, WHICH MAY ARISE IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES, SOFTWARE AND ANY DOCUMENTATION EVEN IF TRITECH HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS CLAUSE SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.
- C. TRITECH DISCLAIMS ALL LIABILITY FOR ANY DAMAGE RESULTING FROM OR RELATED TO DATA AND/OR CLAIM FORMS AND RELATED INFORMATION TO, BY, ABOUT OR FOR ANY FEDERAL, STATE OR PRIVATE INSURANCE ORGANIZATIONS, INCLUDING, BUT NOT LIMITED TO MEDICARE, MEDICAID, AND COMMERCIAL INSURANCE COMPANIES. TRITECH MAY PROVIDE SUCH DATA OR INFORMATION, IF AT ALL, ONLY AS "SAMPLES" FOR THE PURPOSE OF DEMONSTRATING OR DISPLAYING HOW SUCH DATA AND/OR CLAIM FORMS MAY OPERATE IN THE SOFTWARE. TRITECH PROVIDES ALL SUCH SAMPLES ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES, EITHER EXPRESS OR IMPLIED. TRITECH RECOMMENDS THAT CLIENT VERIFY THE ACCURACY OF ANY AND ALL DATA AND/OR CLAIM FORMS CLIENT USES WITH THE SOFTWARE.
- D. TRITECH DISCLAIMS ALL LIABILITY FOR THE ACCURACY AND/OR COMPLETENESS OF DATA, INCLUDING BUT NOT LIMITED TO DATA SUPPLIED WITH THE SOFTWARE OR AS ADDED OR MODIFIED BY CLIENT OR ANY THIRD PARTY, OR DATA AS PROCESSED ON CLIENT'S OR TRITECH'S COMPUTER NETWORK. CLIENT BEARS THE ENTIRE RESPONSIBILITY FOR ITS COMPUTER NETWORK, INCLUDING CLIENT'S USE OF THE SOFTWARE, THE PERFORMANCE OF THE SERVICES AND THE SOFTWARE AND THE BEHAVIOR OF THE DATA ON EITHER CLIENT'S OR TRITECH'S COMPUTER NETWORK.
- E. TRITECH REPRESENTS AND WARRANTS TO CLIENT THAT, TO TRITECH'S CURRENT AND ACTUAL KNOWLEDGE, THE SOFTWARE, WHEN USED IN ACCORDANCE WITH THIS AGREEMENT, DOES NOT VIOLATE ANY EXISTING U.S. COPYRIGHTS, PATENTS, TRADEMARKS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY AS OF THE DATE OF THIS AGREEMENT. TRITECH SHALL INDEMNIFY AND HOLD CLIENT HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, SUITS, PROCEEDINGS, CLAIMS,

DEMANDS, LOSSES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, INCURRED BY CLIENT ARISING OUT OF ANY BREACH OF THIS WARRANTY ON THE PART OF TRITECH.

- F IN NO EVENT SHALL TRITECH'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CLIENT AS FEES FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE OCCURRENCE OF THE EVENT THAT GAVE RISE TO SUCH CLAIM; OR, IN THE CASE OF BODILY INJURY OR PROPERTY DAMAGE, FOR WHICH DEFENSE AND INDEMNITY COVERAGE IS PROVIDED BY TRITECH'S INSURANCE CARRIER(S), THE COVERAGE LIMITS OF SUCH INSURANCE.

X. Indemnification.

To the extent allowed by New Mexico law, and Article IX, Section 10 of the New Mexico State Constitution, Client shall indemnify and hold harmless TriTech from, against, and in respect of the full amount of any and all liabilities, damages, and claims including without limitation, attorney's fees, arising from, in connection with, or incident to the Client's use or misuse of the Software, except as may otherwise be agreed to in writing by the parties, and except as to any material breach of this Agreement by TriTech. Nothing herein shall be construed as a waiver or modification of Client's sovereign immunity or limitation of liability at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. In no event shall the Client's total cumulative liability arising from breach of contract, tort, strict liability, special or consequential damages, negligence or damages from breach of any kind by the Client, exceed the total amount of Fees (as defined in Section IV (A) hereof) or compensation paid to TriTech for the twelve (12) month period immediately prior to the occurrence of the event that gave rise to such claim.

EDJ
8/9/19
541-4-1
DS
SS
TriTech Initials
8/15/19

XI. Assignment.

Client shall not transfer or assign any of its rights or obligations under this Agreement to another other person or entity without the express written permission of TriTech, which permission shall not be unreasonably withheld. Any assignment without such express written permission of TriTech shall result in the automatic termination of this Agreement.

XII. Written Notices.

Written notices required or permitted to be given under this Agreement shall be made to the parties at the following addresses and shall be presumed to have been received by the other party (i) three (3) days after mailing by the party when notices are sent by First Class Mail, postage prepaid; (ii) upon transmission (if sent via facsimile with a confirmed transmission report); or (iii) upon receipt (if sent by hand delivery or courier service)

A. Written Notices to Client:

Written notices to Client may be provided at the address listed for Client on the signature page of this Agreement

B. Written Notices to TriTech:

TriTech Software Systems
9477 Waples Street, Ste. 100

San Diego, CA 92121
Attention: Contracts

XIII. Governing Law.

Except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of New Mexico, without regard to its conflict of law provisions.

XIV. Order of Precedence.

The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any schedules, exhibits, attachments, addenda and other attached and included documents: (a) first, the terms contained in the body of this Agreement and in the attached Business Associate Addendum; (b) second, the terms of the schedules, exhibits, attachments and addenda to this Agreement, provided that no order of precedence shall be applied among schedules, exhibits, attachments and addenda; and (c) third, the terms and conditions of any concurrent or subsequent purchase order regarding the subject matter hereof and executed by both parties.

XV. Integration

This Agreement and the Sales Order contain the entire understanding between the parties and supersede any proposal or prior agreement regarding the subject matter hereof.

XVI. Severability

Every term in this Agreement is considered to be severable by the Parties. To the extent that if any term of this Agreement or the Sales Order is in conflict with governing law, that provision shall be enforceable to the extent allowed by law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

SANTA FE COUNTY


Accepted By (Signature)

Printed Name

Title

8.15.19

Date

TRITECH SOFTWARE SYSTEMS

DocuSigned by:

Accepted By (Signature)

Steve Seoane

Printed Name

EVP & GM, Public Safety & Justice

Title

8/14/19

Date

Subscription Service License Agreement
TnTech.com Billing
TnTech Software Systems, Inc.
Approved as to form
Santa Fe County Attorney
Date: 8/19/19

Address Line 1 – Company/Agency Name

Address Line 2 – Street Address

Address Line 3 – City, State, Zip

Schedule A

TECHNICAL SUPPORT

This Schedule describes the terms and conditions relating to technical support that TriTech will provide to Client during the Term of the Agreement.

Product Updates:

From time to time TriTech may develop permanent fixes or solutions to known problems or bugs in the Software and incorporate them in a formal "Update" to the Software. If Client is receiving technical support from TriTech on the general release date for an Update, TriTech will provide the Client with the Update and related Documentation.

Technical Support Services:

Telephone Assistance. Client will be given the telephone number for TriTech's support line and will be entitled to contact the support line during normal operating hours, (between 7:00 a.m. and 6 p.m. U.S. Central Standard Time) on regular business days, excluding TriTech holidays, to consult with TriTech technical support staff concerning problem resolution, bug reporting, documentation clarification, and general technical guidance. Assistance may include remote connectivity, modem, or electronic bulletin board.

Critical Priority Afterhours Telephone Assistance. After Normal TriTech Customer Service Hours, Critical Priority (Priority 1) support for TriTech.com Billing will be answered by our emergency paging service. When connected to the service, the Client shall provide his or her name, organization name, call-back number where the Customer Service Representative may reach the calling party, and a brief description of the problem (including, if applicable, the information that causes the issue to be a Critical Priority).

Web Site Support. Online support is available 24 hours per day, offering Client the ability to resolve its own problems with access to TriTech's most current information. Client will need to enter its designated user name and password to gain access to the technical support areas on TriTech's Web site. TriTech's technical support areas allow Client to: (i) search an up-to-date knowledge base of technical support information, technical tips, and featured functions; and (ii) access answers to frequently asked questions (FAQ).

Software Problem Reporting. Client may submit requests to TriTech identifying potential problems in the Software. Requests should be in writing and directed to TriTech by e-mail, FAX or through TriTech's Support web portal: TriTech.com. TriTech retains the right to determine in its sole discretion the final disposition of all requests, and will inform Client of the disposition of each request. If TriTech decides in its sole judgment to act upon a request, it will do so by providing a bug fix as described above. Enhancement requests should be emailed to emssupport@tritech.com.

Scheduled Maintenance. TriTech.com Billing is unavailable each Monday from 12:00 a.m. to 6:00 a.m. Central Time for regular system maintenance. Regular system maintenance includes installation of the TriTech.com-Billing Industry Service Pack, operating system updates/patches and updates to other third party applications as needed. Special maintenance periods are scheduled as needed for maintenance tasks that cannot be completed in the regularly scheduled 6 hour maintenance window each Monday. Clients are notified of special maintenance periods via a message posted on the login page.

TriTech Service Commitment

Provided that Client remains current on payment of its Subscription fees and provides equipment and remote connectivity that meet TriTech's recommended specifications, TriTech shall:

- Maintain the Subscription Services hosting infrastructure which includes OS updates, third party software updates, and hardware upgrades.
- Provide Software Industry Service Packs weekly.
- Provide product version updates within fourteen (14) business days of general availability.
- Perform daily backups of application files.
- Perform multiple daily database backups.

Software Industry Service Packs and/or product version updates include applicable Federal or State regulatory changes.

Exclusions from Technical Support Services:

TriTech shall have no support obligations with respect to any third party hardware or software product ("Nonqualified Products"). If TriTech provides support services for a problem caused by a Nonqualified Product, or if TriTech's service efforts are increased as a result of a Nonqualified Product, TriTech will charge time and materials for extra service at its current published rates for custom software services. If, in TriTech's opinion, performance of technical support is made more difficult or impaired because of Nonqualified Products, TriTech shall so notify Client, and Client will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render technical support under this Agreement. Client shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

Client Responsibilities:

In connection with TriTech's provision of technical support as described herein, Client acknowledges that Client has the responsibility to do each of the following:

- 1) Provide hardware that meets TriTech's recommended hardware specifications, and remote connectivity
- 2) Maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications, and ensure that any problems reported to TriTech are not due to hardware malfunction;
- 3) Maintain the designated computer system at the latest code revision level deemed necessary by TriTech for proper operation of the Software,
- 4) Supply TriTech with access to and use of all information and facilities determined to be necessary by TriTech to render the technical support described herein;
- 5) Perform any test or procedures recommended by TriTech for the purpose of identifying and/or resolving any problems,
- 6) At all times follow routine operator procedures as specified in the Documentation or any policies of TriTech posted on the TriTech Web Site,
- 7) Other than TriTech's confidentiality obligations with respect to Client Information as set forth in Section VII of this Agreement, Client shall remain solely responsible at all times for the safeguarding of Client's proprietary, confidential, and classified information; and

- 8) Ensure that the designated computer system is isolated from any process links or anything else that could cause harm before requesting or receiving remote support assistance.

Priorities and Support Response Matrix

The following priority matrix relates to software errors covered by this Agreement. Causes secondary to non-covered causes - such as hardware, network, and third party products - are not included in this priority matrix and are outside the scope of this Technical Support Schedule A.

This matrix defines the support issues, response times and resolutions for the Client's licensed TriTech.com Billing Software Application.

Note: Normal Customer Service Hours for TriTech TriTech.com Billing are 7:00am to 6:00 PM Central Standard Time and weekdays excluding holidays. Support after Normal Customer Service Hours is provided weekends, nights and holidays for TriTech.com Billing Critical Priority (Priority 1) issues only.

Software Errors for other than Critical or Urgent Priority may be reported via the web portal: TriTech.com or email: emssupport@tritech.com

Priority	Priority Definition	Response Times
Priority 1 – Critical Priority	<p>24X7 Support for live operations on the production system. This is defined as the following:</p> <ul style="list-style-type: none"> TriTech.com Billing server is down and all workstations will not launch or function. The Customer is experiencing complete interruption of access to the system. <p>TriTech.com Billing is Inoperable due to data loss or corruption caused by TriTech Software. This means that one or more TriTech server components are down or inaccessible, disabling all usability of Client's TriTech.com Billing workstations. These Software Errors are defined in <i>Special Note #1</i>, below.</p>	<p>Normal Customer Service Hours: Telephone calls to 800-987-0911 will be immediately answered and managed by the first available representative or receive a call back within sixty (60) minutes.</p> <p>After Normal Customer Service Hours: Sixty (60) minute callback after client telephone contact to 319-291-8833.</p> <p>Priority 1 issues must be called in to receive this level of response.</p>
Priority 2 – Urgent Priority	<p>Normal Customer Service Hours Support: A serious Software Error with no workaround not meeting the criteria of a Critical Priority, but which severely impacts the ability of Users from performing a common function. Such errors are consistent and reproducible.</p> <p>Generally this means that a significant number of the system TriTech.com Billing workstations are negatively impacted by this error (e.g. does not apply to a minimal set of TriTech.com Billing workstations). These Software Errors are defined in <i>Special Note #2</i>, below.</p>	<p>Normal Customer Service Hours: Telephone calls to 800-987-0911 will be answered and managed by the first available representative or receive a call back within ninety (90) minutes.</p> <p>Priority 2 (Urgent Priority) issues are not managed after Normal Customer Service Hours.</p> <p>Priority 2 issues must be called in order to receive this level of response.</p>

Priority	Priority Definition	Response Times
Priority 3 - High Priority	<p>Normal Customer Service Hours Support: A significant Software Error not meeting the criteria of a Critical or Urgent Priority, but has a workaround available, but which does negatively impact the User from performing common TriTech Billing system functions. Such errors will be consistent and reproducible.</p> <p>A significant number of TriTech.com Billing workstations are negatively impacted by this error (e.g., does not apply to a minimal set of TriTech.com Billing workstations).</p>	<p>Normal Customer Service Hours: Telephone calls to 800.987.0911 will be answered and managed by the first available representative or receive a call back within 24 hours/next business day.</p> <p>Priority 3 (High Priority) Issues are not managed after Normal Customer Service Hours.</p>
Priority 4 – Medium Priority	<p>Normal Customer Service Hours Support: A Software Error related to a user function which does not negatively impact the User from the uses of the system. This includes system administrator functions or restriction of User workflow but does not significantly impact their job function.</p>	<p>Normal Customer Service Hours: Telephone calls to 800.987.0911 will be answered and managed by the first available representative or receive a call back within 24 hours/next business day.</p> <p>Priority 4 (Medium Priority) Issues are not managed after Normal Customer Service Hours.</p>
Priority 5 – Low Priority	<p>Normal Customer Service Hours Support: Cosmetic or Documentation errors, including Client technical questions or usability questions would be a part of this level.</p>	<p>Normal Customer Service Hours: Telephone calls to 800.987.0911 will be answered and managed by the first available representative or receive a call back within 24 hours or the next business day.</p> <p>Priority 5 (Low Priority) issues are not managed after Normal Customer Service Hours.</p>

Priority	Resolution Process	TriTech Respond Resolution SLA
Priority 1 – Critical Priority	TriTech will provide a procedural or configuration workaround or a code correction that allows the Client to resume live operations on the production system.	TriTech will work continuously (including after hours) to provide the Client with a solution that allows the Client to resume live operations on the production system. TriTech will use commercially reasonable efforts to resolve the issue as soon as possible and not later than 12 hours after notification.
Priority 2 – Urgent Priority	TriTech will provide a procedural or configuration modification or a code correction that allows the Client to resume operations.	TriTech will work continuously (including after hours) to provide the Client with a solution that allows the Client to resume live operations on the production system. TriTech will use commercially reasonable efforts to resolve the issue as soon as possible and not later than 36 hours after notification.
Priority 3 - High Priority	TriTech will provide a procedural or configuration workaround that allows the Client to resolve the problem.	TriTech will work to provide the Client with a resolution which may include a workaround or code correction within a timeframe that takes into consideration impact on TriTech's Client User base of the issue and the date of submission. Priority 3 issues have priority scheduling in a subsequent release.
Priority 4 – Medium Priority	If TriTech determines that a reported Medium Priority error requires a code correction, such issues will be addressed in a subsequent release when applicable.	TriTech will work to provide the Client with a resolution which may include a workaround or code correction in a future release of the software. Priority 4 issues have no guaranteed resolution time.
Priority 5 – Low Priority	Low Priority issues are logged by TriTech and addressed at the company's discretion according to TriTech's roadmap planning process.	There is no guaranteed resolution time for Low Priority issues.

Special Note #1: Priority 1 - Critical Priority issues meeting the previously noted criteria are defined as follows:

1. TriTech.com Billing:
 - a. The TriTech.com Billing system server is down and all workstations will not launch or function; the Client is experiencing complete interruption of ability to perform data entry and update records.
 - b. The TriTech.com Billing system is inoperable due to data loss or corruption caused by TriTech Software.

Special Note #2: Priority 2 Urgent Priority Issues meeting the previously noted criteria are defined as follows:

1. TriTech.com Billing:
 - a. The TriTech.com Billing system has a serious Software Error that severely impacts the ability of Users to perform critical work functions. Such errors will be consistent and reproducible.
 - b. The TriTech.com Billing System is unable to generate bills or create electronic claims in the TriTech.com Billing system.
 - c. The TriTech.com Billing system is unable to transfer data from external system to Billing.

ADDENDUM 1

BUSINESS ASSOCIATE ADDENDUM

TriTech will appropriately safeguard protected health information ("PHI") that is created, received, maintained, or transmitted on behalf of Customer in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended ("HIPAA"), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the "HITECH Act").

A. General Provisions

1. **Meaning of Terms.** The terms used in this Addendum shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Addendum to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Addendum shall be interpreted to permit compliance with HIPAA.

B. Obligations of Business Associate

TriTech agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Addendum or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information ("e-PHI") and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Addendum;
3. Report to Customer any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to Customer without unreasonable delay but in no case later than 60 days after discovery of the breach;

4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of TriTech agree to the same restrictions, conditions, and requirements that apply to TriTech with respect to such information;
5. Make PHI in a designated record set available to Customer and to an individual who has a right of access in a manner that satisfies Customer' obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by Customer, or take other measures necessary to satisfy Customer' obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to Customer or an individual who has a right to an accounting within 60 days and as necessary to satisfy Customer' obligations under 45 CFR §164.528;
8. To the extent that TriTech is to carry out any of Customer' obligations under the HIPAA Privacy Rule, TriTech shall comply with the requirements of the Privacy Rule that apply to Customer when it carries out that obligation;
9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by TriTech on behalf of Customer, available to the Secretary of the Department of Health and Human Services for purposes of determining TriTech and Customer' compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if Customer notifies TriTech of any restriction on the use or disclosure of PHI that Customer has agreed to or is required to abide by under 45 CFR §164.522.

C. Permitted Uses and Disclosures by Business Associate

The specific uses and disclosures of PHI that may be made by TriTech on behalf of Customer include:

1. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by Customer to its patients;

2. Preparation of reminder notices and documents pertaining to collections of overdue accounts;
3. The submission of supporting documentation to carriers, insurers and other payers to substantiate the healthcare services provided by Customer to its patients or to appeal denials of payment for the same; and
4. Other uses or disclosures of PHI as permitted by HIPAA necessary to perform the services that TriTech has been engaged to perform on behalf of Customer.

D. Term and Termination

1. This Addendum supersedes any prior Business Associate Agreement between TriTech and Customer.
2. Customer may terminate this Agreement if Customer determines that TriTech has violated a material term of this Addendum.
3. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Addendum, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.
4. Upon termination of the Agreement and this Addendum for any reason, TriTech shall return to Customer or destroy all PHI received from Customer, or created, maintained, or received by TriTech on behalf of Customer that TriTech still maintains in any form. TriTech shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this Addendum will extend to such PHI.

Agreement No. 2020-0037-FD/BT

ADDENDUM 2

Sales Order

(Attached)

