

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is made as of the Effective Date written below, by and between **Involta, LLC**, an Iowa limited liability company, (“**Involta**”) and person identified as the Client on the Master Services Agreement Signature Page (“**Client**”) as set forth below. This Agreement does not, and is not intended to, define specific services or pricing nor obligate either party to purchase or deliver any services for any period of time. For valuable consideration, including without limitation the covenants contained herein, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties, each acting under due and proper authority, agree to the following:

### 1. PROVISION OF SERVICES

This Agreement states the general terms and conditions by which Involta will deliver, and Client will purchase, various services or goods, or both, upon execution of one or more Service Orders (individually a “**Service Order**” and collectively the “**Service Orders**”) by the parties. Services and goods, and additional terms and conditions applicable to their provision or delivery, will be further described on one or more Service Orders or Service Order Modifications describing the particulars of products and services (“**Services**”) which reference this Agreement, or are incorporated into this Agreement. This Agreement applies to any and all services and goods provided by Involta and purchased by Client in accordance with any and all Service Orders. All specific obligations to purchase or deliver any goods or services, including without limitation the term and pricing, will be described in a Service Order, and in any and all Service Descriptions attached to or incorporated into a Service Order (individually a “**Service Description**” and collectively the “**Service Descriptions**”), which must be fully executed and in force in order to obligate Involta to deliver any goods or services.

### 2. RELATED DOCUMENTATION

2.1 *Involta documents.* Additional definitions, terms, conditions, descriptions and information applicable to particular categories of equipment, facilities, circuits and other goods or services to be provided by Involta are provided in the [Involta Terms and Conditions Schedule](#) (the “**TC Schedule**”) attached as an Exhibit to this Agreement or, in the event no such Exhibit is attached, then as found at <http://tc.involta.com>, which, in either case, are incorporated here by this reference, and in the applicable Service Orders and Service Order Modifications (defined below) signed by the parties, which reference this Agreement. Service Order Modifications are used to modify Service Orders if and when necessary (“**Service Order Modifications**”).

2.2 *Equipment Subject to Separate Agreement.* Notwithstanding anything in this Agreement to the contrary, if Involta and Client enter into a separate rental or finance agreement relating to any equipment provided by Involta (an “**Equipment Use Agreement**”), Client’s obligations with respect to such equipment (payment or otherwise) shall be solely governed by the Equipment Use Agreement, and any modification or termination of this Agreement, any TC Schedule or Service Order shall not operate to modify or relieve Client from any of Client’s obligations under the Equipment Use Agreement. Amounts owed Involta under any Equipment Use Agreement are not included in the charges for the Services under a TC Schedule or Service Order, though such amounts may be invoiced along with the charges owed by Client to Involta under a TC Schedule or Service Order for Client’s convenience.

### 3. FEES AND PAYMENT TERMS

3.1. *Fees and Expenses.* Client will pay all fees, costs and expense due pursuant to each TC Schedule, Service Order and, where applicable, Service Order Modification. Client also agrees to reimburse Involta for actual out-of-pocket commercially reasonable travel and travel-related expenses incurred in providing any services as approved in advance in written format, including by electronic mail.

3.2. *Invoicing.* Client will be billed as indicated in each Service Order. Except as otherwise expressly set forth a Service Order, service fees and charges not based directly on variable monthly usage are invoiced monthly in advance. Except as otherwise expressly set forth a Service Order, all service fees and charges based directly on variable monthly usage incurred during a month will be billed at the end of the month that such usage occurred.

3.3. *Payment Terms.* Payments are due as indicated in each Service Order. In the event no

payment due date is indicated on a Service Order, then Client payment for all fees are due upon receipt of each Involta invoice. All payments shall be made in the United States in U.S. dollars. Client must promptly notify Involta of any invoice disputes and both parties shall work toward a mutually agreeable resolution.

3.4. *Late Payment.* Any payment not received within thirty (30) days of the due date will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower, but subject to and in addition to a twenty dollar (\$20.00) minimum processing fee. If a Client has a dispute with an invoice a description of the disputed matter must be delivered to Involta within the time for payment and the parties agree to work in good faith to resolve the dispute as promptly as is reasonably practical. If Client is delinquent in its payments of undisputed fees, Involta may, in its sole discretion and upon written notice to Client, but without written amendment to this Agreement, modify the payment terms to require advance payment before the provision of further services or equipment, or require other assurances to secure Client's payment obligations hereunder.

3.5. *Taxes.* All fees charged by Involta are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the sale, use, transaction and/or the delivery of any services or equipment. Client will be responsible for, and will pay in full, all taxes, fees, duties and charges imposed on the services or equipment or the delivery thereof by any governmental entity which Involta is obligated by law to collect in conjunction with the provision or delivery of the services or equipment. For clarity, Client is not responsible for the payment of any taxes based on Involta's income.

3.6. *Other Remedies for Late Payment or Non-payment.* In addition to any other rights granted to Involta herein, Involta reserves the right to suspend or terminate this Agreement if Client fails to pay or dispute any invoice within sixty (60) days. Client will continue to be charged fees and other charges for Services during any period of suspension. In addition to any other rights or remedies available to Involta, in the event Client has failed to pay two successive undisputed invoices or has an undisputed balance due in excess of sixty (60) days, then Involta may restrict access to the Services or equipment, or its facilities, by requiring Client's representatives to be accompanied by Involta personnel in the case of physical access and by requiring additional password requirements or other advance coordination in the case of virtual access.

3.7. *CPI Adjustments.* All monthly fees may increase annually by no more than the lesser of five percent (5%) or the Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, percentage change from the preceding semi-annual average as published by the U.S. Department of Labor Bureau of Labor Statistics for the most recently completed one-half calendar year ("**CPI Adjustments**"). All CPI Adjustments shall occur at the same time annually and shall occur no more frequently than once annually, and Involta shall provide Client at least thirty (30) days' prior written notice of any such CPI Adjustments.

#### **4. SERVICE LEVEL PROVISIONS AND ACCEPTABLE USE POLICIES**

Any policies, terms, conditions and provisions applicable to the acceptable use of the Services or governing service level commitments will be described in a TC Schedule or Service Order, or both, as applicable.

#### **5. CONFIDENTIAL INFORMATION**

5.1. *Nondisclosure of Confidential Information.* Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("**Confidential Information**"). Confidential Information will include all information in tangible or intangible form that is marked or designated as "confidential" or "proprietary" by either party or that, under the circumstances of its disclosure, should be reasonably be considered confidential. Confidential Information will include, but not be limited to, all information, materials, data and documents, in whatever form, relating to either party which is not generally available to the general public. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information, at least as stringent as it takes to protect its own Confidential Information.

5.2. *Exceptions.* Information will not be deemed Confidential Information hereunder if such information: (i) was known to the receiving party prior to receipt from the disclosing party directly or indirectly as demonstrated by the receiving party's records; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of the Agreement by the receiving party; or (iv) has been or is disclosed, without restrictions on disclosure, to a third party by the disclosing party; or (v) is independently developed by the receiving party. These exceptions do not apply to Covered Information, as defined in Section 9.1 of this Agreement. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice of such required disclosure.

## 6. INTELLECTUAL PROPERTY

6.1. *Ownership.* Unless otherwise expressly provided in a Service Order, all patents, copyrights, trademarks, service marks, trade dress, software, processes, materials, inventions, designs, code and works of authorship, including derivatives therefrom or thereof, ("IP") now owned by Involta, including all derivatives therefrom or thereof, (collectively the "Involta IP") shall be and remain the sole and exclusive property of Involta, and this Agreement does not transfer any title to Involta IP to Client. Unless otherwise expressly provided in a Service Order, all IP now owned by Client, including all derivatives therefrom or thereof, (collectively the "Client IP") shall be and remain the sole and exclusive property of Client and this Agreement does not transfer any title to any Client IP to Involta. Unless otherwise expressly provided in a Service Order, each party agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any IP owned by the other. Unless otherwise expressly provided in a Service Order, Involta does not, and will not, provide its services, including the Services set forth herein, on a "work for hire" or "work made for hire" basis in connection with this Agreement, and Client acknowledges the same.

6.2. *General Skills and Knowledge.* Notwithstanding anything to the contrary in the Agreement, Involta will not be prohibited or enjoined at any time by Client from utilizing any skills or knowledge of a general nature acquired during the course of providing the Service(s), including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Involta.

### 6.3. License Grants.

6.3.1. *By Involta.* Involta hereby grants to Client a limited, nonexclusive, nontransferable, royalty-free license, to use the Involta IP during the term of this Agreement, to the limited extent necessary to use, and solely for purposes of using, the Service(s). Client shall have no right to use the Involta IP for any purpose other than using the Service(s).

6.3.2. *By Client.* Client agrees that if, in the course of performing the Service(s), it is necessary for Involta to access Client equipment and use Client's IP, then Involta is hereby granted by Client and shall have a limited, nonexclusive, royalty-free license, during the term of this Agreement, to use such equipment and Client IP solely for the purpose of delivering the Service(s) to Client and Client shall not unreasonably restrict, limit or refuse such license. Involta shall have no right to use the Client IP for any purpose other than providing the Service(s).

## 7. INVOLTA REPRESENTATIONS AND WARRANTIES

7.1. *Standard of Performance.* Involta will provide the Services in a competent and workmanlike manner consistent with accepted industry standards and practices of substantially similar providers of substantially similar services and in accordance with all material requirements set forth in the Service Order, as applicable.

7.2. *DISCLAIMER OF WARRANTIES.* EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, INCLUDING ANY EXPRESSLY PROVIDED IN ANY SERVICE ORDER, TO THE MAXIMUM EXTENT ALLOWED BY LAW, INVOLTA DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES ARISING UNDER STATUTE, WARRANTIES OF MERCHANTABILITY, ACCURACY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR

PURPOSE OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, UNLESS EXPRESSLY PROVIDED IN A SERVICE ORDER, INVOLTA SPECIFICALLY DOES NOT WARRANT THAT THE SERVICES, DELIVERABLES, EQUIPMENT OR ANY MATERIALS WILL MEET THE REQUIREMENTS OF CLIENT OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR. CLIENT ACKNOWLEDGES THAT IN ENTERING THIS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN OR INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

7.3. Involta warrants that the use of the Services furnished pursuant to the Agreement shall not infringe any United States patent, copyright, trade secret or other proprietary right covering such services. Involta agrees, at its own expense, to defend or, at its option, to settle any claim, suit or proceeding brought against Client on the issue of infringement of any United States patent, copyright, trade secret or other proprietary right with respect to the Services furnished by Involta to Client under this Agreement. In the event that the Services should be determined to be subject to the proprietary rights of a third party, Involta agrees, at its option, to: (1) procure for Client the right to continue using the Services; or (2) replace or modify the Services to make them non-infringing while retaining original functionality; or (3) discontinue access to the Services, or a portion thereof, and (a) refund to Client the annual subscription fee paid for the Services, less a reasonable charge for use to date, (b) release Client from any future obligation to use such Services. THIS SECTION 7.3 STATES INVOLTA'S ENTIRE LIABILITY AND THE CLIENT'S EXCLUSIVE REMEDY FOR THIRD PARTY CLAIMS AND ACTIONS ARISING FROM ALLEGATIONS OF IP INFRINGEMENT.

7.4 *Disclaimer of Warranty for Client Purchased Equipment.* UNLESS EXPRESSLY PROVIDED IN A SERVICE ORDER, ALL EQUIPMENT PURCHASED BY THE CLIENT FROM INVOLTA, INCLUDING, BUT NOT LIMITED TO, EQUIPMENT SUBJECT TO ANY EQUIPMENT USE AGREEMENT, ("**CLIENT PURCHASED EQUIPMENT**") IS PROVIDED ON AN "AS-IS, WHERE IS" BASIS. INVOLTA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CUSTOMER PURCHASED EQUIPMENT, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE IS HEREBY EXPRESSLY DISCLAIMED. INVOLTA'S SOLE OBLIGATION, AND CLIENT'S EXCLUSIVE REMEDY, TO THE EXCLUSION OF ALL OTHER REMEDIES THEREFOR, EXPRESS OR IMPLIED, for any defect or nonconformity in the Client Purchased Equipment shall be for Involta to cooperate with Client to provide it with the benefit, if any, of the warranty and support commitment of the third-party manufacturers and suppliers of the Client Purchased Equipment. Client expressly waives any claim against Involta for any failure of the Client Purchased Equipment, or any related patent, copyright or trademark infringement with respect to the Client Purchased Equipment.

7.5. *No Liability for DOS Attack.* Client acknowledges and agrees that Involta shall incur no liability of any nature due to a DOS Attack targeted directly upon Client ("**DDOSOC**"). Involta will take measures reasonably necessary in its discretion to block any known DDOSOC that occurs during the period of the Term (as defined below) with respect to the Client's facilities and shall incur no liability to Client in connection with any actions taken to block a DDOSOC. All time and bandwidth consumed by the DDOSOC and other costs incurred by Involta because of the DDOSOC (including blocking such DDOSOC) will be billed to the Client in the month of the DDOSOC. Such billings will be determined based on the severity and complexity of the DDOSOC.

7.6 *Representations of Involta.* Involta represents and warrants that (i) it has the legal right and authority, and will continue to own or maintain the legal right and authority, during the term of this Agreement, to use any Involta IP and Involta equipment contemplated to be used in connection with the Services; (ii) the performance of its obligations and provision of the Service(s) by Involta will not cause a breach of any agreements with any third parties or, to its knowledge, will not violate any applicable laws or regulations, (iii) all equipment, materials and other tangible items used by Involta in connection with the Service(s) will be used in compliance with all applicable manufacturer specifications, and (iv) it has the legal right and authority to enter into this Agreement based on the signature following Involta's name below.

## 8. CLIENT OBLIGATIONS

8.1 *Representations of Client.* Client represents and warrants that (i) it has the legal right and authority, and will continue to own or maintain the legal right and authority, during the term of this

Agreement, to use any Client IP and Client equipment contemplated to be used in connection with the Services; (ii) the performance of its obligations and use of the Service(s) (by Client, its customers and, to the extent Client is able to ensure it, users) will not cause a breach of any agreements with any third parties or unreasonably interfere with any other Involta operations or other Involta customers' use of Involta services and, to its knowledge, will not violate any applicable laws, regulations or applicable AUP, (iii) all equipment, materials and other tangible items used by Client in connection with any of the Service(s) will be used in compliance with all applicable manufacturer specifications, and (iv) it has the legal right and authority to enter into this Agreement based on the signature following Client's name below. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Involta will have the right, in its sole, reasonable discretion, to suspend immediately any of the Service(s) if (i) deemed reasonably necessary by Involta to prevent any harm to Involta and its business, and (ii) Involta has not previously been notified that such Service(s) are required to provide primary patient care to third-parties. Involta will provide advance notice and opportunity to cure if practicable where such cure can be accomplished without harm, or meaningful risk of harm, to Involta, its other customers or its equipment, depending on the nature of the breach. Once cured, Involta will promptly restore the Service(s).

8.2 *Compliance with Law.* Client will use the Service(s) only for lawful purposes and in accordance with the Agreement.

8.3 *Restrictions on Use of Service(s).* Client shall not, without the prior written consent of Involta (which may be withheld in its sole discretion), resell the Service(s) to any third parties.

## 9. INFORMATION SECURITY AND PROTECTION

### 9.1 *Definitions.*

9.1.1 "*Client's Data*" means all of Client's Confidential Information which is delivered to Involta or installed by Client on Involta equipment in accordance with this Agreement and Involta's commercially reasonable policies and procedures described in this Agreement.

9.1.2 "*Covered Information*" shall mean any personally identifiable non-public, health or financial or student educational record information as defined in Client Kimberly School District No. 414's Policy 3575 on "Student Data Privacy and Security, information that (a) is not publicly available Information and (b) that is delivered to Involta or installed by Client on Involta equipment in accordance with this Agreement and Involta's commercially reasonable policies and procedures described in this Agreement and is separate and distinct from Confidential Information, but including without limitation, social security numbers, credit information and payment card information, such as account and card numbers, verification numbers, and expiration dates, information which can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account information, credit report information, biometric or health data, answers to security questions and other personal identifiers), and "protected health information," as defined in the "Privacy Rule" (45 CFR Parts 160 and 164, subparts A and E), whether in paper, electronic or other form, that is obtained, handled, accessed or maintained by Involta on behalf of Client, or exchanged between Client and Involta, in the performance of this Agreement.

9.1.3 "*Encrypt*" shall mean the process of converting information into an unintelligible form except to holders of a specific cryptographic key.

9.2 *Involta Responsibilities.* Involta shall take commercially reasonable measures to provide the security safeguards where Involta is identified as the "Responsible Party" on the "Security Roles and Responsibilities Table" set forth in the TC Schedule attached hereto or, in the event no such Exhibit is attached, then as found at <http://tc.involta.com>. Other than with respect to such responsibilities and the provisions of this Section 9, Client acknowledges and agrees that Involta is not responsible for the integrity or security of any Client's Data. Although Involta may offer various security-related Services, Involta agrees to perform only the specific security services set forth on a Service Order.

9.2.1 *Security Incident.* Involta agrees to notify Client of any Security Incident confirmed by Involta as soon as practical, but no later than four (4) hours after such confirmation. In the event that the

Security Incident source was within the scoped Involta Responsibilities, Involta agrees to (a) collect and retain imaging, logs and available applicable information and data as soon as practicable, and then implement commercially reasonable remediation efforts, and (b) deliver an investigation report within sixty (60) calendar days after any Security Incident is confirmed. "Security Incident" means any act or omission that results in (a) the unauthorized acquisition, access, modification, use or disclosure of Confidential Information or Client's Data, or (b) the failure of any of the physical, technical, administrative or organizational safeguards put in place by Involta that relate to the security of Covered Information or Client's Data to function as represented.

9.2.2 *Security Response.* Involta shall: (i) provide Client with the name and contact information for an employee of Involta who shall serve as Client's primary security contact and shall be available to assist Client twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Incident. Upon Client's reasonable written request, Involta will assist and provide reasonable documentation during the investigation, and the parties shall coordinate and cooperate with each other during the investigation. Involta agrees to provide commercially reasonable cooperation to Client in connection with Client's efforts to investigate and analyze any Security Incident, including, without limitation: (i) assisting with any investigation; (ii) providing Client with physical access to the facilities and operations affected; (iii) facilitating interviews with Involta's employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise reasonably required by Client.

9.2.3 *Security Mitigation and Remediation.* Involta shall take commercially reasonable steps within its control to promptly remedy any Security Incident and prevent any further damage from occurring as a result of any Security Incident at Involta's expense in accordance with applicable privacy rights, laws, regulations and standards. Involta shall reimburse Client for actual costs incurred by Client in responding to, and mitigating damages, caused by any Involta-sourced Security Incident, including all cost of notice and/or remediation. In the event of any Security Incident, Involta shall promptly use its reasonable efforts to prevent a recurrence of any such Security Incident.

9.2.4 *Access.* Involta serves the role as a service provider custodian. Involta will maintain commercially reasonable physical, technical and administrative safeguards designed and intended to protect the Client's Data, Client's environment and Covered Information against unauthorized access. Involta acknowledges that it may have ancillary access to Client's Data based on the Services provided, and will not disclose, use or transfer data except as necessary to perform the Services rendered. Involta strongly recommends that the Client encrypt sensitive regulated data in connection with any Services provided by Involta. Any decision not to encrypt is made at the sole discretion and risk of Client, provided, for clarity, that any failure by Client to encrypt such data does not relieve Involta of its obligations to maintain safeguards as provided herein. Client will work with Involta in good faith to develop and implement a cost-effective solution to encrypt all Covered Information. Use of encryption protects information between the encryption process and the decryption process (the inverse of encryption) against unauthorized disclosure. In the event Client does not Encrypt Client's Covered Information involved in or related to the Services at rest, then the parties agree that Involta shall have no liability for any damage resulting from a Security Incident, no matter how such Security Incident is caused, to the extent that such damage would have been avoided had Client Encrypted the Client's Covered Information at rest.

9.2.5 *Privacy.* Involta represents and warrants that its collection, access, use, storage, disposal and disclosure of Covered Information does and will comply with all applicable federal and state privacy and data protection laws, including the Family Educational Rights and Privacy Act and I.C. § 33-133 et seq.

9.3 *Client Responsibilities.* Client shall use commercially reasonable security precautions in connection with the use of the Services. Client represents it will require its end users and customers to use commercially reasonable security precautions. Client shall use commercially reasonable efforts to ensure logical security protection and backup and recovery of Client's Data, except to the extent Involta has specifically agreed to provide such Services in a Service Order. Client will only deliver information to Involta through a secure delivery system and will not deliver Covered Information by electronic mail.

9.3.1 *Security Incident.* Client agrees to notify Involta as soon as practical, but no later than four (4) hours upon becoming aware of a Security Incident affecting, or the misuse or unauthorized disclosure of, the Client Equipment or Client's Data. Client shall cooperate with Involta in any investigation of the use or possible use of the Client's Equipment, the facilities or the Services for any illegal purpose. Client shall apply all security patches or updates to software, firmware and operating systems under Client's control, unless such actions are expressly described as one of the Services, and subject to Client's customary testing protocols before patch deployment ("**Client Updates**"). If Involta discovers any Client Updates were not completed in accordance with the foregoing and Involta determines in its reasonable discretion that it creates a security risk to other Involta clients, then the Involta network connected to such unpatched or noncurrent devices may be shut down or block in Involta's sole discretion. With respect to any Services managed by Involta, Client consents to Involta's application of all security patches or updates to Client's software, firmware or operating system in order to mitigate the possibility of system compromise.

9.3.2 *Compromised Host.* Client must apply all security patches or updates to Client's software, firmware or operating system in order to mitigate the possibility of system compromise. With respect to Services managed by Involta, Client consents to Involta's application of all security patches or updates to Client's software, firmware or operating system in order to mitigate the possibility of system compromise, following written notice from Involta of the planned patches or updates and provides an opportunity for testing. Unpatched systems that cause a security risk to other Involta customers or the Involta network may be shut down or blocked in Involta's sole discretion per the AUP.

9.3.3 *Data Responsibility.* Client acknowledges and agrees that, except as expressly set forth in a Service Order, Involta is not responsible for knowing what type of information may be created, stored, used or managed by Client in connection with the Services. Involta is not responsible for knowing or investigating which laws may or may not apply to any specifically-regulated information of Client. If any state or federal law requires any specific requirements about such information, it is Client's responsibility to notify Involta and, in such event, the parties will work together in good faith to modify this Agreement or Service Order, as the case may be, as may be required. For the avoidance of doubt, nothing in this Section 9.3.3 will relieve Involta of its obligations to comply with all laws and regulations applicable to it with respect to Covered Information.

9.4 *Certain Remedies.* Each party acknowledges that the unauthorized disclosure or use of the other party's Covered Information may cause irreparable harm and significant injury to the other party, the degree of which would be difficult to ascertain. Accordingly, each party agrees that the other party will have the right to seek an immediate injunction enjoining any breach or alleged breach, wherever it deems appropriate, as well as the right to pursue any and all other rights and remedies available at law or in equity in the event of such a breach or alleged breach.

9.4.1 *Cooperation.* Involta agrees to reasonably cooperate with Client in any litigation or other formal action deemed reasonably necessary by Client to protect its rights relating to the use, disclosure, protection and maintenance of Covered Information.

9.4.2 *Disclosure.* Involta shall not, except to the extent required by law, inform any third-party of any Security Incident impacting Covered Information without first obtaining Client's prior written consent, other than to inform a complainant that the matter has been forwarded to Client. Further, Involta agrees that with respect to any Security Incident impacting Covered Information Client shall have the sole right to determine: (i) whether notice of the data breach is to be provided to any individual, regulators, law enforcement agencies, consumer reporting agencies or other third-parties as may be required by law or regulation, or otherwise in Client's sole discretion; (ii) the contents of such notice; and, (iii) the nature and extent of remediation, if any, which may be offered to affected persons; provided, however, in the event Involta receives a written opinion of a third-party attorney that Involta is required by law to provide any notice or report of a data breach or Security Incident, then Involta may provide such notice or report without breach of this Agreement.

9.5 *Security Governance Program.* Involta shall maintain an Information Security Governance Program consisting of an Information Security Policy and shall implement and maintain the safeguards and associated procedures contained therein, and, in addition, Risk Assessment Procedures for safeguarding information assets and systems, and shall implement and maintain the procedures contained therein. The

Information Security Policy identifies the physical, technical and administrative controls used by Involta to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle information assets and systems. The Risk Assessment Procedures consider, and mitigate, as appropriate, information security risks or vulnerabilities within critical Involta operations. Combined, the Information Security Policy and Risk Assessment Process will provide requirements and standards that are tested and validated by third-party auditors and safeguard information assets and systems through an ongoing process to reduce risk and prioritize within the collective organization.

**9.5.1 Data Center.** Involta has established and shall continue to maintain throughout the term of this Agreement, polices, programs and procedures that are necessary and appropriate, including administrative, technical, administrative, organizational and physical safeguards, to protect the confidentiality, integrity and security of data located in, or transmitted through, a facility or in its possession, custody or control against unauthorized access, use, modification, disclosure, or misuse.

**9.5.2 Security Officer.** Involta has assigned a Chief Information Security Officer to be solely responsible on behalf of Involta for the Information Security Governance Program and the security of Involta and the assets of Involta's clients.

**9.5.3 Background Checks and Training.** Due diligence is conducted prior to hiring Involta personnel and obtaining contractors and vendors, including background checks covering criminal, education and employment history. Annual security awareness training is conducted upon new hire training and annually thereafter. Acknowledgements and training documentation are retained and provided as evidence for external audits.

**9.5.4 Penetration Testing.** Client may purchase penetration testing or allow a third-party provider to conduct a penetration test within the Client's scope, provided said testing does not impact Involta or its clients. Client will provide Involta with the name of the contractor, date/start times and duration. Tests are not to be performed without Involta notification and approval. In the event the penetration test shows signs of impact to Involta or its clients, Involta reserves the right to block and or shutdown the service. Involta will not disable DDoS mitigation during the test. Involta performs annual penetration tests in accordance with applicable regulatory agencies, an attestation of a penetration test and summary remediation can be provided at the Client's request.

**9.5.5 Vendor Management.** Involta will provide commercially reasonable cooperation with Client's efforts to meet Client's responsibilities to conduct due diligence and audit Involta as its third-party data vendor pursuant to the Gramm-Leach-Bliley Act and other applicable laws, rules and regulations. Upon the commercially reasonable request and instruction of Client, Involta will regularly make available audit reports and materials that are available to address Client's vendor management and diligence requirements.

**9.5.6 Business Continuity.** Involta shall maintain a continuity plan to minimize the risk associated with a disaster affecting any Involta facility and Involta's provisioning of the Services. Client is responsible for their own recovery of services, disaster recovery plan and testing of such a plan as determined as defined in the Security Roles and Responsibilities. Such disaster recovery plan shall ensure that in the case of a disaster within or around the geographic location or locations where Client will receive the Services and store Client Equipment, as the case may be, Involta shall be able to continue providing the Services to Client with minimal interruption. Involta shall notify Client immediately, and work with Client to minimize such interruption, including, at Client's sole discretion, either switching Services and Client Equipment to a redundant facility capable of meeting the requirements of this Agreement or terminating, without penalty or liability, the affected Service and/or this Agreement and transitioning the Services and Client Equipment to a replacement service provider selected by Client.

**9.5.7 Regulatory Attestation.** Involta shall implement administrative, physical and technical safeguards to protect Involta, its clients and the Covered Information through accepted industry practices, including without limitation, the Information Technology Library ("ITIL") standards, GLBA, SSAE16 SOC 1 for reports issued before May 1, 2017, and SSAE18 for reports issued after May 1, 2017, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH Act) and shall ensure that all such safeguards, including the manner in which



Covered Information is collected, accessed, used, stored, processed, disposed of and disclosed, if any, are tested for compliance with applicable laws.

9.5.8 *Audit Requests.* Upon the Client's reasonable written request, to confirm compliance with this any applicable laws and industry standards, Involta shall, within thirty (30) days after receipt of such request, complete a written information security questionnaire provided by Client or a third-party on the Client's behalf regarding Involta's business practices and information technology environment in relation to all Covered Information being handled and/or services being provided by Involta to Client pursuant to this Agreement.

9.6 *Risk Assessment and Determination.* Client acknowledges and agrees that it: (i) has conducted an assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Client's Data to be created, transmitted, stored, used or maintained in connection with the Services; (ii) has determined that the Services are sufficient for Client's purposes and Client's compliance with applicable law; and (iii) Involta is not responsible for determining whether any Services are sufficient for Client's compliance with any applicable law.

#### 9.7 *Standard of Care and Information Security*

9.7.1 Involta acknowledges and agrees that, in the course of its engagement by Client, Involta may receive or have access to Covered Information. Involta shall comply with the terms and conditions set forth in this Section 9.7 in its collection, receipt, transmission, storage, disposal, use and disclosure of Covered Information, if any under its control or in its possession.

9.7.2 In recognition of the foregoing, Involta agrees and covenants that it shall:

9.7.1.1 keep and maintain all Covered Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure;

9.7.1.2 use and disclose Covered Information solely and exclusively for the purposes for which the Covered Information, or access to it, is provided pursuant to the terms and conditions of the Agreement, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Covered Information for Involta's own purposes or for the benefit of anyone other than Client, in each case, without Client's prior written consent; and

9.7.1.3 not, directly or indirectly, disclose Covered Information to any person other than its employees and agents who need to know such information in conjunction with the provision of the Services (an "**Unauthorized Third-Party**"), without express written consent from Client, unless and to the extent required by Government Authorities or as otherwise, to the extent expressly required, by applicable law, in which case, Involta shall (i) use commercially reasonable efforts to notify Client before such disclosure or as soon thereafter as reasonably possible; (ii) be responsible for and remain liable to Client for the actions and omissions of such Unauthorized Third-Party concerning the treatment of such Covered Information as if they were Involta's own actions and omissions; and (iii) require the Unauthorized Third-Party that has access to Covered Information to execute a written agreement agreeing to comply with the terms and conditions of this Agreement relating to the treatment of Covered Information.

9.7.2 Involta represents and warrants that its collection of and access to Covered Information, and that its use, storage, disposal and disclosure of Confidential Information does and will comply with all applicable federal and state privacy and data protection laws, including the Family Educational Rights and Privacy Act and I.C. § 33-133 et seq.

9.7.3 Upon Client's reasonable written request, Involta shall provide Client with a network diagram that outlines Involta's information technology network infrastructure and all equipment used in relation to fulfilling of its obligations relate to Covered Information, including, without limitation: (i) connectivity to Client and third parties who may access Involta's network to the extent the network contains Covered

Information; (ii) all network connections including remote access services and wireless connectivity; (iii) all access control devices (for example, firewall, packet filters, intrusion detection and access-list routers); (iv) all back-up or redundant servers; and (v) permitted access through each network connection.

9.7.4 Upon the Client's reasonable written request, to confirm compliance with this Section 9.7, as well as any applicable laws and industry standards, Involta shall promptly and accurately complete a written information security questionnaire provided by Client or a third-party on the Client's behalf regarding Involta's business practices and information technology environment in relation to all Covered Information being handled and/or services being provided by Involta to Client pursuant to this Agreement. Involta shall cooperate with such inquiries.

## 10. INDEMNIFICATION

10.1 *Involta Obligation.* Subject to the provisions of this Agreement, Involta shall: (i) defend Client, its officers, directors and employees against any third party suit, claim, action or demand ("**Claim**") to the extent arising out of the acts or omissions of Involta related to its performance under this Agreement, and (ii) pay any court-ordered award of damages or settlement amount, and reasonable attorney fees, to the extent caused by such Claim.

10.2 *Exclusion.* Involta shall have no defense or indemnification obligation or liability for any Claim arising in whole or in part from: (i) the use of any Service which exceeds the authorized use permitted under this Agreement; (ii) the content of any Client data; (iii) the use of any Service by Client in violation of applicable law or after termination of such Service in accordance with this Agreement; (iv) any Client IP or software; (v) modifications to any Service by any person other than Involta or a person acting at Involta's direction; (vi) modifications made by Involta at the request of Client where such modifications were based on Client's specification and the Claim would not have occurred but for such modifications; or (vii) use of any Service in combination with any hardware, software, application or service made or provided other than by or with the consent of Involta, which consent shall not be unreasonably withheld.

10.3 *Client Obligation.* Subject to the provisions of this Agreement, Client shall (i) defend, indemnify and hold Involta, its officers, directors and employees harmless against any Claim (A) to the extent arising out of the acts or omissions of Client, or (B) alleging that Client data or Client IP or software infringes any valid IP right of a third party that is issued or registered in the United States, or (C) by Client's clients or customers not directly arising from the acts of Involta, and (ii) pay any court-ordered award of damages or settlement amount, and reasonable attorney fees, to the extent caused by such Claim.

10.4 *Process.* All of the foregoing indemnity obligations of Involta and Client are conditioned on the indemnified party notifying the indemnifying party promptly in writing of any actual or threatened Claim, the indemnified party giving the indemnifying party sole control of the defense thereof and any related settlement negotiations, and the indemnified party cooperating and, at the indemnifying party's request and expense, assisting in such defense.

## 11. INSURANCE

11.1 *Minimum Levels.* Each party agrees to keep in full force and effect during the term of this Agreement the following insurance coverages:

11.1.1 Comprehensive general liability insurance ("**CGL**") in an amount not less than Two-Million Dollars (\$2,000,000.00) general aggregate and One-Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage;

11.1.2 Property damage insurance ("**Property**") covering no less than the full actual value of the party's personal and real property;

11.1.3 Workers' compensation insurance ("**WC**") in an amount not less than that required by applicable law;

11.1.4 Automobile liability insurance ("**Auto**") with a single combined limit of \$1,000,000.00 million; and

11.1.5 Professional liability, or substantially equivalent Cyber Errors & Omissions/Information Security liability ("**Professional**"), in an amount not less than Five-Million Dollars

(\$5,000,000.00), (including coverage for failure to prevent unauthorized access to, or use of, data, including electronic data, containing private or confidential information of others); provided, however, that Client shall be required to maintain Professional in an amount not less than One-Million Dollars (\$1,000,000.00)..

11.2 *Additional Requirements.* An excess and/or umbrella liability insurance policy which follows the form of any of the above required coverages may be used to meet the required limits. The CGL policy shall include automatic additional insured if required by contract as well as blanket waiver of subrogation and primary/non-contributory forms. The Auto policy shall contain additional insured and a blanket waiver of subrogation form. The workers compensation policies shall contain a blanket waiver of subrogation. Each party will provide written notification to the other of any material change in any of its insurance coverages or corresponding limits. This Agreement requires Involta to list Client, and Client to list Involta, as an additional insured under their respective GCL and Auto coverages.

11.3 *Certificates.* Each party will deliver certificates of insurance which evidence the coverage type, additional insured requirements, and corresponding minimum levels of insurance set forth above upon reasonable request.

11.4 *Property.* Each party shall be solely responsible for insuring such party's own equipment and other property, even if such property is kept or maintained at the other party's premises and shall look solely to its own insurance in the event of any damage or loss to such equipment or other property. Involta assumes no liability for any damage to, or loss of, any Client equipment or other property owned or used by Client resulting from any cause other than to the extent directly caused by the gross negligence or willful misconduct of Involta. To the extent Involta is liable for any damage to, or loss of, Client equipment for any reason, such liability will be limited solely to the then-current replacement value of the Client equipment, excluding lost data, software and firmware.

## 12. TERM AND TERMINATION

12.1 *Term.* This Agreement begins on the Effective Date and applies to all transactions between Involta and Client. This Agreement continues until terminated pursuant to the terms of this Agreement (the "Term").

12.2 *Termination After Completion of Services.* Each party may terminate this Agreement in its entirety upon ninety (90) days' prior written notice to the other party, provided that at the time such notice is served there are no Service Orders outstanding and in effect.

12.3 *Termination Prior to Completion of Services.* Each party may terminate this Agreement and all outstanding Service Orders in their entirety either:

12.3.1 Immediately if the other party breaches a material term or condition of this Agreement or of any Service Order for any reason within its reasonable control and fails to cure such breach within thirty (30) calendar days after receipt of such written notice of the same, except in the case of Client's failure to pay undisputed fees or other amounts due from Client to Involta hereunder, which must be cured within three (3) calendar days after receipt of written notice from Involta;

12.3.2 Immediately upon written notice if an event of Force Majeure prevents one party from performing a material portion of the Services and has continued for at least ninety (90) days.

## 13 EFFECT OF TERMINATION

13.1 Upon the effective date of Termination of this Agreement,

13.1.1 Involta will immediately cease providing Services and providing or procuring any equipment; and,

13.1.2 Any and all payment obligations of Client under this Agreement for Services, equipment or otherwise arising or accrued through the date of termination will immediately become due

13.1.3 Client will remove all of Client's data and other assets from all of Involta's facilities and equipment.

13.2 In the event of termination due to Client's breach of this Agreement, Involta shall be entitled to invoice, collect and recover any fees or charges payable, and any and all other damages allowed by law resulting from Client's breach of this Agreement, including any amounts required pursuant to any Service Order.

13.3 In the event all of Client's data and other assets are not removed from all of Involta's facilities and equipment within sixty (60) days after the effective date of Termination of this Agreement, Involta has the right, but not the obligation to provide Client with written notice to remove all of Client's data and other assets from all of Involta's facilities and equipment (the "Notice to Quit"). In the event all of Client's data and other assets are not removed from all of Involta's facilities and equipment are not removed within thirty (30) days after the Notice to Quit, Involta has the right, but not the obligation, to delete all of Client's data and dispose of all of Client's assets in Involta's sole discretion, without penalty or claim of damages, and Client hereby consents to such deletion and disposition, if any. Notwithstanding anything to the contrary herein, Client shall pay Involta for all services received after the effective date of termination of this Agreement through the date all of Client's equipment, assets and data are removed from Involta facilities.

#### 14 LIMITATIONS OF LIABILITY AND DAMAGES

14.1 *Exclusion of Damages.* Involta, and its officers, managers, directors, members, employees or affiliates, shall not be liable to Client or any third party for lost profits (whether direct or indirect) or loss of use of data, interruption of service caused by a third-party attack or similar incursion or failure, costs of substitute goods, for incidental, consequential, punitive, special or exemplary damages (including damage to business, reputation or goodwill), or for indirect damages of any type, however caused, whether by breach of warranty, breach of contract, in tort or any other legal or equitable cause of action even if Client has been advised of such damages in advance or if such damages were foreseeable.

14.2 *Limitations on Liability.* To the maximum extent permitted by enforceable law, the total, cumulative liability of each party arising out of or related to this Agreement or the services provided hereunder, whether based on contract, in tort or any other legal or equitable theory, shall be limited to an amount equal to the greater of (i) in the event any such liability or claim is covered by an insurance policy, then such liability or claim shall be limited to amount of coverage as determined by the issuer of such policy; and, (ii) in the event any such liability or claim is not covered by an insurance policy, the amounts paid by Client for the service giving rise to the claim during the twelve (12) month period preceding the first event giving rise to liability; provided, however, that the foregoing clause 14.2(i) is not intended, and shall not be deemed, to limit or restrict in any way any coverage or benefits provided under any applicable insurance policy. The existence of more than one claim shall not enlarge this limit. The foregoing limitation shall not apply to: (y) intentional misconduct or recklessness, nor (z) Client's obligation to pay amounts owed for services rendered.

14.3 *Basis of the Bargain.* Client acknowledges that Involta sets its prices and has entered into the Agreement in reliance on the warranty disclaimers, representations, liquidated damages, exclusions of damages and limitations of liability and that the same form an essential basis of the bargain between the parties. Accordingly, such shall survive and apply even if later found to have failed of their essential purpose.

#### 15 GENERAL PROVISIONS

15.1 *Assignment.* Neither party may assign its rights or obligations, whether by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may, upon notice and without the other party's consent: (i) in connection with a merger, reorganization or sale of all or substantially all of the assets or equity of such party, assign this Agreement in its entirety to such party's successor; and (ii) assign this Agreement in its entirety to any company, partnership or other legal entity which from time to time directly or indirectly Controls, is Controlled by or is under the common Control with such party, where "Control" means the legal power to direct or cause the direction of the general management of the company, partnership or other legal entity. Any attempted or purported assignment in violation of this Section 15.1 will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

15.2 *Notice.* Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email with receipt confirmed, except that email shall not be sufficient for notices of termination or regarding a Claim. Notices shall be sent to the parties as set forth on the signature page of this Agreement or

as otherwise agreed to by the parties in writing.

15.3 *Force Majeure*. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including without limitation: strikes, lock-outs or other industrial disputes involving a third-party's workforce, trespassing, sabotage, theft or other criminal acts, failure of energy sources or transport network, acts of God, war, terrorism, riot, interference by civil or military authorities, armed conflict, malicious damage, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions (each a "**Force Majeure Event**"). The party suffering a Force Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event.

15.4 *No Lease*. Unless otherwise expressly provided in a Service Order, this Agreement is not intended to and will not constitute a lease of any real property.

15.5 *Marketing*. Client agrees that during the term of this Agreement Involta may publicly refer to Client, orally and in writing, as a Client of Involta. Any other reference to Client by Involta requires the written consent of Client.

15.6 *Government Regulations*. Client will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with the Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Client operates or does business.

15.7 *Non-Solicitation*. During the Term of this Agreement and continuing through the first anniversary of the termination or expiration of this Agreement, Client agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by Involta or contracted by Involta to provide Service(s) to Client. An advertisement in a publication with broad, general distribution, such as Internet job posting sites, shall not constitute a solicitation for purposes of this clause.

15.8 *No Third-Party Beneficiaries*. Involta and Client agree that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Client.

15.9 *Governing Law; Dispute Resolution*. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Idaho (except that body of law controlling conflicts of law). The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. The parties agree to participate in a mediation conducted by a third-party mediator in a neutral location with each party paying fifty percent (50%) of the cost of the mediation on all disputed issues before initiating litigation in any court on such disputed issue.

15.10 *Severability; Waiver*. The provisions of this Agreement are interdependent and are not severable and if any provision deemed material by either party is held by a tribunal of competent jurisdiction to be contrary to the law or unenforceable then the Agreement shall terminate. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach by default and will not act to amend or negate the rights of the waiving party.

15.11 *Relationship of Parties*. Involta and Client are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Involta and Client. Neither Involta nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

15.12 *Entire Agreement; Counterparts; Originals*. This Agreement, including all documents incorporated herein by reference, constitutes the complete agreement between the parties with respect to

the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Any additional or different terms in any purchase order or other response by Client shall be deemed objected to by Involta without need of further notice of objection and shall be of no effect or in any way binding upon Involta. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original. Except where specifically contemplated herein, this Agreement may be changed only by a written document signed by authorized representatives of Involta and Client in accordance herewith.

15.13 *Survival*. The following provisions will survive any expiration or termination of the Agreement: Sections 4, 5, 6, 7, 12, 13 and 14.

## 16 BUSINESS ASSOCIATE PROVISIONS

16.1 *Access to Records*. Upon written request made within four (4) years of the termination date of this Agreement, the Secretary of Health and Human Services and/or the Comptroller General of the United States, or their duly authorized representatives, shall have access to this Agreement and to Involta's books, documents, and records necessary to verify the costs of services performed under this Agreement, in accordance with procedures established by applicable regulations implementing Section 952 of the Omnibus Reconciliation Act of 1980 (Public Law 96-499). Further, in the event Involta carries out any duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a 12-month period, such subcontract must contain a clause to the effect that the subcontractor will, for a period of four (4) years after the services were furnished, make available to the Secretary of Health and Human Services and/or to the Comptroller General, or their duly authorized representative, the subcontract and the books, documents and records that are necessary to verify the nature and extent of the costs of the services provided under the subcontract.

16.2 *Federal Program Eligibility*. Each party represents and warrants to the other that (a) neither it nor any of its principals or affiliates are excluded from participation under any federal health care program, as defined under 42 U.S.C. § 1320a-7b(f), for the provision of items or services for which payment may be made under a federal health care program; (b) neither party has arranged or contracted (by employment or otherwise) with any employee, contractor or agent that it or its affiliates know or should know are excluded from participation in any federal health care program; and (c) no final adverse action, as such term is defined under 42 U.S.C. § 1320a-7e(g), has occurred or is pending against it or its affiliates or to its knowledge against any employee, contractor or agent engaged to provide items or services under this Agreement; and, each shall notify the other party of any Exclusion/Adverse Actions or any basis therefore within seven (7) days of its learning of any such Exclusion/Adverse Action or any basis therefore. Ineligibility to participate in any federal health care program is grounds for immediate termination of this Agreement at the other party's sole discretion.

16.3 *Business Associate Agreement*. The provisions of the Business Associate Agreement Provisions attached as Exhibit "16.3" are incorporated by this reference. The parties agree that in the event services to be provided under a Service Order will involve PHI, as defined on Exhibit "16.3," then the parties will address any applicable encryption requirements in such Service Order.

## 17 CONTRACTUAL REFERENCES

- 17.1 Client's legal name: Kimberly School District
- 17.2 Account Number: 000022117
- 17.3 MSA Number: MSA2021121622459
- 17.4 Involta's FEIN: 26-0610499
- 17.5 This Agreement is made as of the date of the last signature on the following page (the "**Effective Date**").

[Remainder of page intentionally blank; Master Services Agreement Signature Page follows]

Master Services Agreement Signature Page

<b>Client (legal name):</b> Kimberly School District	<b>Involta, LLC:</b>
<b>Client is a:</b>	<b>Involta is a:</b>
<b>Name of State:</b>	<b>Name of State:</b> Iowa
<b>Type of Entity:</b>	<b>Type of Entity:</b> limited liability company
<b>Individual signing:</b> (print name)	<b>Individual signing:</b> (print name)
<b>Signature:</b>	<b>Signature:</b>
<b>Title:</b>	<b>Title:</b>
<b>Signing date:</b>	<b>Signing date:</b>
<b>Client address for notice:</b>	<b>Involta address for notice:</b>
	Involta, LLC 460 12 <sup>th</sup> Ave SE, Suite 100 Cedar Rapids, IA 52401 Attn: CEO  with a copy to:  Rings Law, P.L.C. P. O. Box 2921 Cedar Rapids, IA 52406-2921

Commented [JS1]: Need Kimberly School District to provide.

Commented [JS2]: Need Kimberly School District to provide.

Commented [JS3]: Need Kimberly School District to provide.

DATE	AUTHOR	PURPOSE
7-April-16	RR	Original
08-June-17	JLS-RR	New Section 7.3
28-November17	RR	Revise Section 10.2
28-February 18	JLS	Update 6.3.1 & Address for Notice
01-August 18	PSS	Update Infringement and Indemnity Language
04-March 19	PSS	CPI; DDOSOC; Information Security
02-December 21	PSS	Revised Sections 5.2 & 14.2; Punctuation revisions

Exhibit "16.3"

*Business Associate Agreement Provisions*

The following provisions are incorporated into and made a part of that certain MSA Number MSA2021121622459 ("**MSA**" and together with this Exhibit "16.3" the "**Agreement**") made as of the Effective Date (defined in the Agreement), by and between **Involta, LLC**, an Iowa limited liability company, ("**Involta**") and person identified as the Client on the Master Services Agreement Signature Page ("**Client**"). Any terms or phrases undefined in this Exhibit "16.3" shall have the meaning given to them in the Agreement. In the event of any conflict or ambiguity between this Exhibit "16.3" and the MSA, the MSA shall control. The parties agree as follows:

**1. DEFINITIONS**

(a) Catch-all definition: The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Designated Record Set, Disclosure, Individual, Minimum Necessary, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

(b) Specific definitions: "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

**2. OBLIGATIONS AND ACTIVITIES OF INVOLTA**

Involta agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Report to Client within a commercially reasonable time any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Involta agree to the same restrictions, conditions, and requirements that apply to the Involta with respect to such information;

(e) Make available protected health information in a designated record set to the Client as necessary to satisfy any of Client's obligations under 45 CFR 164.524;

(f) Make available protected health information for amendment and incorporate any amendments as directed or agreed to by the Client pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Client's obligations under 45 CFR 164.526;

(g) Make available the information required to provide an accounting of disclosures to the Client as necessary to satisfy Client's obligations under 45 CFR 164.528;

(h) To the extent the Involta is to carry out one or more of Client's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Client in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.



(j) Notwithstanding anything to the contrary herein, if Involta receives a request from an individual, or an individual's designee, under Section 2(e), (f) or (g) herein, Involta shall forward such request to Client, and Client shall be solely responsible for adjudicating and responding to each such request.

### **3. PERMITTED USES AND DISCLOSURES BY INVOLTA**

(a) Involta may only use or disclose protected health information as necessary to perform the services set forth in the Agreement;

(b) Involta may use or disclose protected health information as required by law;

(c) Involta agrees to make uses and disclosures and requests for protected health information consistent with Client's minimum necessary policies and procedures; or

(d) Involta may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Client.

### **4. PERMISSIBLE REQUESTS BY CLIENT**

Client shall not request Involta to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Client.

### **5. TERM AND TERMINATION**

(a) Term. The Term of this Agreement shall be effective as of the date set forth above and shall continue (i) until the Master Services Agreement is terminated, or (ii) until terminated as set forth in this BA Agreement, whichever is sooner.

(b) Termination for Cause. Involta authorizes termination of this Agreement by Client, if Client determines Involta has violated a material term of the Agreement, and Involta has not cured the breach or ended the violation within thirty (30) days.

(c) Obligations of Involta Upon Termination. Upon termination of this Agreement for any reason, Involta shall return to Client or destroy, all protected health information received from Client, or created, maintained, or received by Involta on behalf of Client that Involta still maintains in any form. Involta shall retain no copies of the protected health information.

(d) Survival. The obligations of Involta under this Section shall survive the termination of this Agreement.

### **6. MISCELLANEOUS**

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. In the event that there shall be a change in the law, rules or regulations, or interpretation of any such law, rule, or regulation which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in the Agreement, either party may, by providing advance written notice, propose an amendment to the Agreement addressing such issues. If the parties are unable to agree upon such amendments within fifteen (15) days following the notice, either party may terminate this Agreement by giving the other party at least thirty (30) days written notice.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.