



# TriNetX

## HEALTHCARE ORGANIZATION NETWORK AGREEMENT

HCO:	Medway NHS Foundation Trust	Contact:	Dr Edyta McCallum
Address:	Windmill Road, Gillingham, Kent ME7 5NY	Phone:	+44 1634 830000 ext. 5743
		Email:	edyta.mccallum@nhs.net
Initial Term:	24 Months	Renewal Term	12 Months

### Initial Order Form

Technology	Quantity	Fee	Payment Terms
TriNetX Live Platform	25 Authorized Users	No Charge	N/A
Services			
Other Services:	N/A		
Appliance			
Hewlett Packard DL380 Gen 9	1	No Charge	N/A

This Healthcare Organization Network Agreement (the "**Agreement**") is made and entered into as of the last date of signature below (the "**Effective Date**") by and between the healthcare organization identified above ("**HCO**") and TriNetX, Inc., a Delaware corporation, with an address at 125 Cambridge Park Drive, Cambridge, MA, 02140, USA ("**TriNetX**"). TriNetX and HCO shall each be referred to herein as a "**Party**." This Agreement may be executed in counterparts, each of which shall be an original, but which together shall constitute one instrument and includes and incorporates herein by reference the below Terms and Conditions.

WHEREAS, TriNetX has developed and is the owner of a proprietary cloud-based informatics platform that allows users to analyze aggregate patient populations and facilitate clinical research, study design and clinical trial recruitment;

WHEREAS, HCO is a healthcare organization that desires to access and use the TriNetX platform for purposes of searching its own HCO patient data, collaborating with other healthcare organizations to search their combined data, and/or allowing other users of the TriNetX platform to query and analyze aggregate patient populations of participating healthcare organizations, subject to the terms and conditions set forth herein; and

WHEREAS, HCO desires to access, and TriNetX agrees to provide, certain services and equipment related to HCO's use of the TriNetX platform on the terms and conditions set forth herein.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed and delivered by their duly authorized representatives as of the Effective Date.

HCO: Medway NHS Foundation Trust

TRINETX, INC.

DocuSigned by:

James Whelan

6D78B3DEC102480

Name:

Diana Hamilton Fairley

Name:

James Whelan

Title:

Medical Director

Title:

SVP, Global Sales

Date:

22/1/2018

Date:

2018-01-12

Lesley Dwyer  
CEO  
25/1/18

## Terms and Conditions

**1. DEFINITIONS.** Certain definitions used in this Agreement are set forth below; other capitalized terms used herein shall have the respective meanings set forth elsewhere in this Agreement.

**1.1. "Aggregated Query Results"** means aggregated results of queries run in the TriNetX Live Platform against data of participating healthcare organization(s) but shall not include Personal Data.

**1.2. "Appliance"** means the TriNetX appliance or other equipment set forth on an Order Form and loaned to HCO for use with the TriNetX Live Platform.

**1.3. "Authorized User"** means an employee or independent contractor of HCO who has been issued a valid username and password by HCO to use the TriNetX Live Platform.

**1.4. "Collaborator"** means a healthcare organization participating in a Collaborative Network.

**1.5. "Collaborative Network"** means two or more healthcare organizations that agree to make their data available for querying as a single network and accessible only to the healthcare organizations participating in the collaboration, through the use of the TriNetX Live Platform.

**1.6. "Confidential Information"** means business, technical and research information of the disclosing Party that is designated in writing as confidential, or that a reasonable person would understand to be confidential. The TriNetX IP and any information related to the TriNetX Live Platform are deemed to be the Confidential Information of TriNetX, and HCO Data is deemed to be the Confidential Information of HCO. Confidential Information does not include information that (a) that at the time of disclosure is or becomes publicly known through no fault of the receiving Party; (b) that is or has been disclosed to the receiving Party by a third party having no obligation of confidentiality to the disclosing Party; (c) that is or has been independently developed by the receiving Party without access to the disclosing Party's Confidential Information; or (d) that is already in the receiving Party's possession at the time of disclosure.

**1.7. "HCO Data"** means the data provided by HCO to TriNetX for analysis and/or query in the TriNetX Live Platform, including the Extracted Data (defined below).

**1.8. "Natural Language Processing Services" or "NLP Services"** means those services described in Section 5.2.

**1.9. "Order Form"** means the cover page to this Agreement, an amendment to this Agreement or a supplemental order form, which shall be in writing, signed by both parties, and shall specify software to be licensed or Services or to be purchased by HCO from

TriNetX.

**1.10. "Personal Data"** means any information relating to an identified or identifiable natural person, such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

**1.11. "Privacy Statement and Consent"** means the terms regarding collection and use of Authorized Users' Personal Data as set forth on the log-in screen or elsewhere within the TriNetX Live Platform.

**1.12. "Services"** means those services to be delivered by TriNetX to HCO in connection with the use of the TriNetX Live Platform, if and as set forth in an Order Form or Statement of Work.

**1.13. "Sponsor"** means a pharmaceutical company, contract research organization, or any other entity conducting research on patient populations.

**1.14. "Sponsor User"** means a user of the TriNetX Live Platform who is a clinical researcher employed by a Sponsor.

**1.15. "Term"** means the Initial Term together with any Renewal Term(s), each of which are identified in the table on the first page of this Agreement.

**1.16. "TriNetX IP"** means all intellectual property rights, title and ownership rights in and to the TriNetX Live Platform and Services (including NLP Services), including any updates, modifications, improvements and/or new features and functionality, translations, customized versions or other versions or derivative works thereof, whether or not developed in the course of or as a result of this Agreement.

**1.17. "TriNetX Live Platform"** means TriNetX's proprietary cloud-based research platform for cohort analysis and site selection with access to patient populations.

## 2. RIGHTS TO ACCESS AND USE

**2.1 TriNetX Access to HCO Data.** Within a mutually agreed upon time after the Effective Date, HCO will provide TriNetX access to the HCO Data, either as files that conform to the TriNetX Data Requirements Guide or by accessing HCO's designated data warehouse.

**2.2 HCO Access to and Use of the TriNetX Live Platform.** Subject to the terms and conditions of this Agreement, TriNetX grants to HCO a non-exclusive, non-transferable, limited license for the number of Authorized Users set forth in the Order Form to access and use the TriNetX Live Platform during the Term: (a) to query, analyze, and display to HCO the HCO Data for HCO's internal, non-commercial research purposes; and/or (b) as a member of a Collaborative Network (i) to query the study data of all



Collaborators (ii) to view queries performed by any Collaborator, and (iii) to view the Aggregated Query Results from queries performed by any Collaborator. Prior to any Authorized User accessing the TriNetX Live Platform, the Authorized User must agree to the Privacy Statement and Consent.

**2.3 Collaborative Networks.** HCO may become a Collaborator upon submission of a Collaborative Network Authorization to [support@trinetx.com](mailto:support@trinetx.com). Upon receipt of a Collaborative Network Authorization, TriNetX shall enable the TriNetX Live Platform to display the results of queries run against HCO Data as Aggregated Query Results to other Collaborator(s) in the Collaborative Network. HCO represents that, as a Collaborator, HCO and its Authorized Users shall comply with the TriNetX Collaborative Network Policy and will only use Aggregated Query Results including Collaborator data for the sole purpose of collaborating with other Collaborators. HCO may close access to HCO Data to other Collaborators upon written notice to TriNetX, and upon receipt of such notice, TriNetX shall cease displaying the results of queries run against HCO Data. TriNetX shall have no liability for, and HCO shall indemnify and hold harmless TriNetX from, any claims arising out of or related to TriNetX's disclosure or display of HCO Data to any Collaborator in reliance upon HCO's Collaborative Network Authorization. Additional healthcare organizations may join a Collaborative Network upon all Collaborators authorizing such addition(s).

**2.4 Restrictions.** HCO will not, and will not allow its Authorized Users to (i) attempt to decompile, decode, disassemble, or otherwise reverse engineer the TriNetX Live Platform; (ii) copy, in whole or in part, the TriNetX Live Platform or any component thereof; (iii) modify, enhance, create derivative works of, combine with other programs, or otherwise change the TriNetX Live Platform; (iv) develop or have developed any product or service using or based on any component of the TriNetX Live Platform; (v) sublicense, sell, rent, lease, provide service bureau or timeshare services, transfer, transmit, distribute or otherwise make the TriNetX Live Platform or any component thereof or any content contained therein available to third parties other than as set forth herein; (vi) unless appropriate privileges and authorizations have been obtained, attempt to re-identify any individual patient from any data, information or content displayed or made available in the TriNetX Live Platform; or (vii) use the names of any other healthcare organizations without written permission from such healthcare organizations. HCO shall not use the TriNetX Live Platform in whole or in part for any purpose other than those set forth in Section 2.2 (including

collaborating with organizations that are not authorized users of the TriNetX Live Platform).

### **3. HCO DATA**

**3.1 Authorization to Provide HCO Data.** As between HCO and TriNetX, HCO is solely responsible for the accuracy, completeness, validity, authorization for use and integrity of all HCO Data provided to TriNetX for use in the TriNetX Live Platform. HCO represents and warrants that: (a) HCO has all necessary rights and authority to provide TriNetX access to the HCO Data as provided hereunder; and (b) HCO will provide access and disclose to TriNetX only such HCO Data as HCO is authorized to provide access to and disclose to TriNetX and that such access and disclosure will be provided at all times in compliance with all applicable law, including applicable data protection laws and regulations. HCO represents and warrants that, any HCO Data that has been anonymized or pseudonymized has been anonymized or pseudonymized in compliance with applicable law and/or guidelines. Without limiting the foregoing, each Party will perform all of its activities described herein, and protect the privacy and provide for the security of all Personal Data, all in accordance with applicable data protection laws and regulations.

**3.2 TriNetX Right to Use and Display HCO Data.** HCO hereby grants to TriNetX a fully-paid up, worldwide, right and license during the Term to make the HCO Data available as part of healthcare organization data available in the TriNetX Live Platform for users to run queries against, and

a. when HCO is the user of the TriNetX Live Platform, to display the results of such queries to HCO, which shall be provided as Aggregated Query Results;

b. when HCO is a Collaborator, to display the queries and results of queries as Aggregated Query Results in the TriNetX Live Platform to all Collaborators in such Collaborative Network; and

c. when Sponsor Users are the users of the TriNetX Live Platform, to display Aggregated Query Results in the TriNetX Live Platform to Sponsor Users. HCO understands and acknowledges that the TriNetX Live Platform stores queries and Aggregated Query Results and, as a result, TriNetX's right to display Aggregated Query Results in the TriNetX Live Platform and its right to use any stored queries for any lawful business purpose (including product development or improvement) shall survive termination or expiration of this Agreement.

**4. APPLIANCE.** The following terms in this Section 4 shall apply in the event TriNetX loans an Appliance to HCO for purposes of TriNetX accessing HCO Data:

**4.1 Provision of Appliance.** During the Term, and subject to any limitations herein, TriNetX shall lend to



HCO the Appliance solely for use with the TriNetX Live Platform. The Appliance shall be delivered and maintained by TriNetX, subject to HCO's responsibilities described in Section 4.2 below. Title to the Appliance shall remain with TriNetX or its suppliers. HCO shall have no right or interest in or to the Licensed Appliance except as expressly provided in this Agreement.

**4.2 HCO Responsibilities.** HCO will be responsible for preparing its designated facility(-ies) for installation, for providing adequate space, foundations, heating and cooling, and electrical power, and for mounting the Appliance in a rack and installing it. HCO shall afford TriNetX or its agent(s) reasonable access to the premises for configuration and maintenance of the Appliance. HCO shall provide TriNetX with read-only access to HCO's designated data warehouse during the Term in order to extract HCO's Data and load such data onto the Appliance.

**4.3 Custody of Appliance.** HCO is responsible for the full cost of repair or replacement of any Appliance that is damaged, lost, confiscated, or stolen from the time HCO assumes custody until it is returned to TriNetX. If the Appliance is lost, stolen or damaged, HCO shall promptly notify TriNetX.

## **5. SERVICES.**

**5.1 Generally.** TriNetX shall provide the Services described in any Order Form or Statement of Work incorporated into this Agreement. TriNetX is responsible for the assignment of personnel to perform all such Services and may make any change in staffing it deems necessary provided that such change does not compromise the level of expertise required to complete the Services.

**5.2 NLP Services.** Subject to the terms and conditions of the Agreement, TriNetX shall set up and provide the NLP Services purchased under any Order Form. The NLP Services include the extraction of clinical facts from HCO's clinical documents such as progress notes and pathology reports ("Extracted Data") and loading of the Extracted Data onto the TriNetX Appliance for the purpose of querying in the TriNetX Solution. Upon HCO's request, TriNetX shall provide a feed of the Extracted Data to HCO, and HCO shall be permitted to access and query the Extracted Data solely for its own internal, non-commercial clinical research purposes.

During the implementation of the NLP Services ("NLP Set-Up"), HCO shall: (i) provide samples of each document type; (ii) review the accuracy of Extracted Data; and (iii) validate that the Extracted Data has been associated with the correct patients. After NLP Set-Up, HCO shall: (iv) provide an agreed to periodic feed of clinical documents, with associated pseudonymized meta-data, for the supported

document types; (v) notify TriNetX if errors are detected in Extracted Data; and (vi) assist TriNetX with resolution of errors that require resubmission of documents or validation of functionality.

## **6. FEES AND PAYMENT—RESERVED**

## **7. CONFIDENTIAL INFORMATION**

Each receiving Party shall protect and keep confidential all Confidential Information disclosed by the disclosing Party, and shall not, except as expressly authorized by this Agreement or authorized by the disclosing Party in writing, use or disclose such Confidential Information. The receiving Party may disclose Confidential Information of the disclosing Party pursuant to the requirements of law or the order or requirement of a court, administrative agency, or other governmental body, provided that the receiving Party gives reasonable notice to the disclosing Party to contest such order or requirement. HCO understands and agrees that TriNetX may use third party subcontractors to provide services or perform under this Agreement, and that TriNetX may transfer Confidential Information of HCO to such third party subcontractors in connection with such services. TriNetX shall ensure that third party subcontractors are required to protect HCO's Confidential Information on terms consistent with this Agreement and accepts responsibility for such third party subcontractors' use of HCO's Confidential Information.

## **8. OWNERSHIP; PUBLICITY**

**8.1 Ownership.** Each Party shall retain ownership of all right, title and interest in and to such Party's pre-existing intellectual property. HCO retains all right, title and ownership rights that HCO holds in the HCO Data. TriNetX retains all right, title and ownership rights in the TriNetX IP. TriNetX shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the TriNetX Live Platform and/or the NLP Services any suggestions, enhancement requests, recommendations or other feedback provided by HCO or its Authorized Users relating to such. At no time shall HCO acquire or retain any title or ownership rights in and to, or appropriate for its own use, the TriNetX IP. To the extent that HCO obtains any rights in the TriNetX IP, HCO hereby assigns all such rights to TriNetX.

**8.2 Use of Name in TriNetX Live Platform.** HCO understands and acknowledges that one of the benefits in using the TriNetX Live Platform is collaborating with other healthcare organizations using the TriNetX Live Platform and facilitating clinical research opportunities with Sponsors. As such, HCO authorizes TriNetX to refer to HCO by name in the



TriNetX Live Platform and may display HCO's name associated with results of queries and as a prospective and active participant in Collaborative Network(s).

**8.3 Public Use of Names.** Subject to any trademark use guidelines provided by HCO to TriNetX in writing, TriNetX shall not use HCO's name or logo without HCO's prior written permission. HCO shall not use TriNetX's name or logo without TriNetX's prior written permission. HCO shall not use the name of any other member, including any Collaborator, without that member's or Collaborator's prior written permission.

## **9. TERM AND TERMINATION**

**9.1 Term.** This Agreement shall commence on the Effective Date and continue for the Initial Term identified in the initial Order Form. The contract may be extended if both Parties agree.

**9.2 Right to Terminate for Material Breach.** Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party at any time during the Term in the event that the other Party hereto materially breaches any provision of this Agreement, and fails to cure such material breach within the thirty (30) day notice period.

**9.3 Suspension.** TriNetX reserves the right to suspend an Authorized User's and/or HCO's access to the TriNetX Live Platform or any portion thereof upon TriNetX's reasonable belief that: (a) tortious, criminal or otherwise improper or prohibited activity may be associated with such Authorized User's and/or HCO's utilization of the TriNetX Live Platform, (b) the usage limitations and restrictions set forth in this Agreement have been violated, or (c) if HCO is otherwise in default of any obligation hereunder. TriNetX shall provide prompt written notice to HCO explaining the reason for any such suspension and may condition any restoration of access upon satisfaction of the conditions associated with the suspension of service as TriNetX reasonably determines are appropriate.

**9.4 Consequences of Termination.** Upon expiration or termination of this Agreement, (i) TriNetX shall discontinue its access to the HCO Data, (ii) HCO shall cease all use of the TriNetX Live Platform, return or destroy all copies of TriNetX IP and all other Confidential Information of TriNetX, and upon TriNetX's request, provide a written notice signed by an executive officer authorized to bind HCO that certifies that HCO has fully complied with this clause. If applicable, and upon HCO's instructions, TriNetX will remove the HCO Data from the Appliance, and arrange collection of the appliance. If HCO fails to return the Appliance in good order and condition, TriNetX will have the right to charge HCO, and HCO will pay, the fair market value of the Appliance. Termination or expiration of this Agreement shall not affect any

claims, liabilities or obligations, which arose in connection with this Agreement prior to such termination or expiration. For avoidance of doubt, subject to the terms and conditions of this Agreement, including without limitation the restrictions on use in Section 2.4, HCO's right to use printed Aggregated Query Results obtained by HCO during the Term and existing as of the effective date of termination of this Agreement as a result of HCO's use of the TriNetX Live Platform will survive termination of this Agreement.

**9.5 Survival.** The last sentence of Section 3.2(c), Section 7, Section 8.1, Section 9.4, this Section 9.5, Section 10, Section 11, 12 (but only with respect to claims arising from use of the TriNetX Live Platform during the Term), Section 13 and Section 15 (inclusive) 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.

## **10. WARRANTIES & DISCLAIMERS**

**10.1 Appliance.** If TriNetX has loaned an Appliance to HCO, this Section 10.1 shall apply. HCO acknowledges that the Appliance is manufactured by third parties and that use and possession of the Appliance by HCO shall be subject to and controlled by the terms of any supplier's warranty. TriNetX agrees to use commercially reasonable efforts to enforce all warranties made by any supplier with respect to the Appliance. In the event of any mechanical or service failure of the Appliance, TriNetX or its supplier(s) shall either repair or replace the Appliance. HCO'S SOLE REMEDY, AND TRINETX'S ENTIRE LIABILITY, FOR ANY MECHANICAL OR SERVICE FAILURE WITH RESPECT TO THE APPLIANCE IS REPLACEMENT.

**10.2 NLP Services.** TRINETX DOES NOT WARRANT THAT THE NLP SERVICES ARE 100% ACCURATE. HCO'S SOLE REMEDY, AND TRINETX'S ENTIRE LIABILITY, FOR ANY ERRORS IN THE EXTRACTED DATA IS TO RESUBMIT DOCUMENTS THROUGH THE NLP SERVICES WITH HCO'S ASSISTANCE.

**10.3 General Disclaimer.** TRINETX IS PROVIDING THE TRINETX LIVE PLATFORM TO HCO "AS IS", AND, EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED ABOVE IN SECTION 10.1 AND 10.2, THE APPLIANCE AND THE NLP SERVICES ARE PROVIDED "AS IS", WITH NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. TRINETX HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT IN RESPECT OF THE TRINETX LIVE PLATFORM, THE SOFTWARE, THE OUTPUT THEREOF, THE NLP SERVICES, AND THE APPLIANCE. WITHOUT LIMITING THE FOREGOING, TRINETX DOES NOT WARRANT THE OUTCOME OR RESULTS OF ANY RESEARCH STUDY



RELYING ON OR INCORPORATING HCO DATA OR THAT THE TRINETX LIVE PLATFORM WILL BE ERROR-FREE OR BE PROVIDED (OR BE AVAILABLE) WITHOUT INTERRUPTION OR MEET HCO'S BUSINESS PURPOSES. THE FOREGOING DISCLAIMER ALSO APPLIES TO TRINETX'S SUBCONTRACTORS AND ANY OTHER THIRD PARTY SUPPLIERS OF PRODUCTS AND SERVICES.

**10.4 Obfuscation.** HCO ACKNOWLEDGES THAT THE TRINETX LIVE PLATFORM INCLUDES AN OBFUSCATION FEATURE THAT MITIGATES THE RISK OF DISPLAYING PHI IN QUERY RESULTS AND THAT IF HCO DISABLES OR INSTRUCTS TRINETX TO DISABLE THE OBFUSCATION FEATURE, THE RISK OF QUERY RESULTS RENDERING IDENTIFYING INFORMATION ABOUT AN INDIVIDUAL IS SIGNIFICANTLY INCREASED. ACCORDINGLY, HCO IS SOLELY RESPONSIBLE FOR HCO'S ELECTION TO DISABLE THE "OBFUSCATION" FEATURE OF THE TRINETX LIVE PLATFORM, AND ANY OTHER ACTIONS OF ANY AUTHORIZED USER.

**10.5 Security of HCO Data on HCO Systems.** HCO IS SOLELY RESPONSIBLE FOR PROTECTING THE SECURITY OF HCO'S DATA AND PROGRAMS ON HCO'S SYSTEMS. HCO ACKNOWLEDGES AND AGREES THAT THE TRINETX LIVE PLATFORM IS NOT AN ELECTRONIC HEALTH RECORDS SYSTEM AND THAT HCO IS SOLELY RESPONSIBLE FOR PERFORMING REGULAR INDUSTRY STANDARD BACKUPS OF HCO'S DATA AND PROGRAMS ON HCO'S SYSTEMS.

**10.6 TriNetX Not Medical Provider.** HCO ACKNOWLEDGES AND AGREES THAT TRINETX IS NOT ENGAGED IN THE PRACTICE OF MEDICINE AND IS NOT DETERMINING APPROPRIATE MEDICAL USE OF ANY DATA, EXTRACTED DATA, OR ANALYSES. TRINETX HAS NO RESPONSIBILITY FOR ANY INACCURATE OR INCOMPLETE OUTPUT OR DATA PRODUCED BY THE TRINETX LIVE PLATFORM OR THE NLP SERVICES.

ALL MEDICAL DIAGNOSTIC AND TREATMENT DECISIONS ARE THE RESPONSIBILITY OF HCO AND/OR OTHER PROFESSIONAL HEALTHCARE PROVIDERS WITH WHOM HCO WORKS OR ASSOCIATES. HCO ACKNOWLEDGES THAT NEITHER IT NOR ANY CARE PROVIDER SHALL RELY ON OR USE EXTRACTED DATA FOR ANY PATIENT CARE, MEDICAL BILLING, OR ANY PURPOSE OTHER THAN RESEARCH.

**11. EXCLUSION OF DAMAGES; LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TRINETX OR ITS SUPPLIERS BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, COST OF COVER, RECOVERY OR RECOUPMENT OF ANY INVESTMENT MADE BY HCO,

OR SIMILAR DAMAGES, EVEN IF TRINETX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY DIRECT DAMAGES, IN THE AGGREGATE, GREATER THAN TWO HUNDRED THOUSAND US DOLLARS (\$200,000). THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH HEREIN SHALL NOT APPLY (A) TO TRINETX'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12; FOR EITHER PARTY'S LIABILITY ARISING OUT OF OR CAUSED BY (B) GROSS NEGLIGENCE RESULTING IN PERSONAL INJURY OR DEATH OR (C) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (D) WHERE APPLICABLE LAW OTHERWISE PROHIBITS SUCH LIMITATION.

## **12. INDEMNIFICATION**

**12.1 Indemnity Obligation.** Except as otherwise provided herein, TriNetX shall indemnify, defend and hold harmless HCO from and against any and all third party claims brought against HCO alleging that (A) the TriNetX Live Platform or the NLP Services, when used in accordance with this Agreement, infringes a patent, trademark or copyright, (B) any injury or allegation of injury to any person, including injury resulting in death, or any loss of or damage to property (whether real or personal) arose from or was a result of TriNetX's negligent acts or omissions or breach of this Agreement, and will pay resulting costs, damages, and reasonable attorney fees finally awarded under such claims or agreed upon in settlement of such claims, provided that HCO notifies TriNetX promptly (but in any event within thirty (30) days of becoming aware) in writing of the claims and HCO provides TriNetX with all necessary assistance, information and authority to perform the above (at TriNetX's expense) and except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, HCO. TriNetX shall have sole control of the defense with respect to any such claim (including settlement of such claim) provided, however, that HCO shall have the option, at its sole discretion and sole expense, to participate in the defense of any such claim using attorneys selected by it. If any portion of the TriNetX Live Platform or the NLP Services, in the opinion of TriNetX, is likely to or does become the subject of a claim of infringement, TriNetX shall have the right at its sole option and expense to: (i) modify the TriNetX Live Platform or NLP Services, as applicable, to be non-infringing; (ii) obtain for HCO a license to continue using the TriNetX Live Platform or NLP Services, as applicable, at no additional charge to



HCO; or (iii) if neither (i) nor (ii) are reasonably practicable, terminate the Agreement.

**12.2 Exclusions.** TriNetX shall have no obligation to indemnify HCO hereunder with respect to any claim based upon (i) any component provided by HCO or any third party; (ii) any modification of the TriNetX Live Platform or NLP Services, as applicable, by a party other than TriNetX, unless such modification was at the direction of TriNetX; or (iii) the combination, operation or use of the TriNetX Live Platform or NLP Services, as applicable, with a software program(s) or data not part of TriNetX Live Platform or NLP Services if the claim would have been avoided had such combination, operation or use not occurred.

**12.3 Above Remedies Exclusive.** HCO agrees that the remedies set forth in Section 12.1 and 12.2 are HCO's sole and exclusive remedies and TriNetX's sole obligations in the event of claims of intellectual property infringement by third parties regarding the TriNetX Live Platform.

**13. HCO Indemnity.** HCO shall indemnify, defend and hold TriNetX harmless from and against any and all third party claims brought against TriNetX that arise out of (a) HCO's or Authorized Users' use of the TriNetX Live Platform in violation of this Agreement, (b) TriNetX's use or access to HCO Data for which HCO was not authorized to provide to TriNetX, and (c) violations of privacy and security laws as a result of HCO's election to disable the obfuscation feature in the TriNetX Live Platform described in Section 10.4, except to the extent such a claim results from a breach by TriNetX of its obligations under the Agreement. HCO will pay resulting costs, damages, and reasonable attorney fees awarded under such claims or agreed upon in settlement of such claims, provided that TriNetX notifies HCO promptly (but in any event within thirty (30) days of becoming aware) in writing of the claims and TriNetX provides HCO with all necessary assistance, information and authority to perform the above (at HCO's expense). HCO shall have sole control of the defense with respect to any such claim (including settlement of such claim), provided, however, that TriNetX shall have the option, at its sole discretion and sole expense to participate in the defense of any such claim using attorneys selected by it.

**14. SECURITY.** TriNetX shall adhere to the security practices set forth in the TriNetX Security and Governance Policy.

## **15. MISCELLANEOUS**

**15.1 Independent Contractors.** Each Party hereto shall remain an independent contractor and nothing

herein shall be deemed to constitute the Parties as partners, agents or joint ventures. Further, neither Party shall have the authority to act, or attempt to act, or represent itself, directly or by implication, as an agent of the other or in any manner assume or create, or attempt to assume or create, any obligation on behalf of or in the name of the other, nor shall either be deemed the agent or employee of the other. Each Party will comply with all laws and regulations applicable to such Party in the conduct of its activities under this Agreement. The Parties hereby expressly agree that there shall be no third party beneficiary in respect of either party's obligations hereunder.

**15.2 No Waiver.** No waiver of any default, condition or breach of this Agreement shall be deemed to imply or constitute a waiver of any other default, condition or breach of this Agreement, whether of a similar nature or otherwise.

**15.3 Irreparable Injury.** Each Party acknowledges that the provisions contained in Sections 7 (Confidentiality) and 8 (Ownership; Publicity) are reasonable and necessary to protect the legitimate interests of the other. Each Party understands and agrees that the remedies at law for the violation of any of Sections 7 or 8.1 will be inadequate, that such violations will cause irreparable injury within a short period of time, and that the non-breaching Party shall be entitled to preliminary injunctive relief and other injunctive relief against such violation without the necessity of proving actual damages. Such injunctive relief shall be in addition to, and in no way in limitation of, any and all other remedies that the non-breaching Party shall have at law and in equity for the enforcement of those covenants and provisions.

**15.4 Unenforceability of Certain Provisions.** In the event that any one or more of the provisions of this Agreement are invalid or otherwise unenforceable, the enforceability of remaining provisions shall be unimpaired.

**15.5 Force Majeure.** In the event that TriNetX is unable to perform any of its obligations under this Agreement due to, including without limitation, a natural disaster, actions or decrees of governmental bodies, telecommunications carriers and other suppliers, terrorist activities or other events beyond TriNetX's reasonable control, TriNetX's obligations under this Agreement shall be suspended during the duration of any such event.

**15.6 Notices.** Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing and shall be sufficiently given if (i) delivered personally, (ii) mailed by certified or registered mail return receipt requested, postage prepaid, or (iii) sent by overnight guaranteed delivery service, and addressed to the

Party's proper address as set forth in the beginning of this Agreement or to such other address or addressee as either Party may from time to time designate to the other by written notice. Any such notice or other communication shall be deemed to be given as of the date it is delivered to the recipient.

**15.7 Export Laws.** The TriNetX Live Platform and the Appliance are subject to England and Wales export laws. HCO will comply with all applicable export control laws or other regulations of the United States or any other government.

**15.8 Assignment.** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. However, neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably delayed, conditioned or withheld, except that TriNetX may assign this Agreement without the consent of HCO in conjunction with a corporate reorganization, merger or sale of substantially all of its assets.

**15.9 Entire Agreement.** This Agreement, including all Exhibits hereto and hereby incorporated herein, embodies the entire agreement between the Parties, is executed under seal and supersedes all previous and contemporaneous agreements, understandings and arrangements with respect to the subject matter hereof, whether oral or written, and may be amended only by a written instrument duly signed by the Parties.

**15.10 Audit.** TriNetX reserves the right to monitor HCO's use of the TriNetX Live Platform and to audit HCO's relevant books and records to verify compliance with the terms and conditions set forth herein. TriNetX will provide HCO reasonable advance written notice of any audit to be conducted at HCO's premises. HCO agrees to make available information and assistance reasonably requested by TriNetX to perform such monitoring and to conduct such audits.

**15.11 Governing Law.** This Agreement is governed by the laws of England and Wales.