

VALANT MASTER SERVICES AGREEMENT

This **VALANT MASTER SERVICES AGREEMENT** (“**Agreement**”) is entered into between Valant Medical Solutions, Inc., a Washington corporation (“**Valant**”), and Mt. Diablo Unified (“**Customer**”). Valant and Customer are each referred to individually as a “**Party**” and collectively as the “**Parties**”. The Agreement is effective as of the date of signature by both Parties (“**Effective Date**”).

WHEREAS, Valant provides a proprietary cloud-based hosted electronic health record (“**EHR**”) system customized for the behavioral health field that includes software applications and content (the “**Valant System**”) and related implementation and support services (the “**Services**”) for health care provider organizations; and

WHEREAS, Customer is a health care provider that desires to procure an EHR and related Services from Valant, and Valant desires to provide such EHR and related Services to Customer pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **VALANT SYSTEM SUBSCRIPTION AND SERVICES.**

- a. **Valant System; Subscription Services.** Valant shall make available to Customer, on a subscription service basis, the current proprietary Valant System applications (the “**Valant Applications**”) and available pre-configured proprietary Valant System processes, workflows and templates (the “**Valant Content**”). As used in this Agreement, the term Valant System shall include all Valant Applications and Valant Content that have been subscribed to by Customer pursuant to this Agreement. Subscriptions to the Valant System (the “**Valant Subscription**”), inclusive of selected Valant Applications and Valant Content, shall be as specified in the Valant System service order form attached hereto as **Exhibit “A”** (the “**Valant System Service Order**”) and shall include related Valant documentation (the “**Documentation**”). The Valant System Service Order is subject to the terms and conditions set forth in this Agreement. Valant will provide Customer with service levels set forth in the [Service Level Agreement](https://go.valant.io/SLA.html) (at <https://go.valant.io/SLA.html>), which is incorporated by reference to this Agreement.
- b. **Professional Services.** Valant shall provide Customer with professional services (“**Services**”) in support of the Valant Subscription as requested by Customer and agreed upon by Valant. Services not explicitly identified as being included with a Valant Subscription shall be offered on a fee for service basis and may include, without limitation, project management, business consulting, or other custom services. The delivery of Services by Valant shall be subject to mutually agreed statement(s) of work (the “**Statements of Work**”). Set-up and implementation for Customer’s Initial Term will be provided as set forth in [Statement of Work: Implementation Terms](https://go.valant.io/Implementation.html) (at <https://go.valant.io/Implementation.html>), which is incorporated by reference to this Agreement.
- c. **Third Party Services.** Valant Applications include certain third-party software, services, data or applications (the “**Third-Party Services**”) and Valant may also make available optional third-party services, either directly or through integrations with Valant Applications, such as billing, electronic prescribing, and clinical laboratory reporting services (the “**Third-Party Options**”) and together the “**Third-Party Services and Options**”). Certain Third-Party Services and Options have end user licensing terms and conditions (at <https://go.valant.io/End-User-Licenses.html>), which are incorporated by reference into this Agreement. Other Third-Party Services and Options may require Customer to enter into separate third-party agreements. Customer will comply with and, upon request, execute, any such required agreements or acknowledgments (each such agreement or acknowledgement, an “**End User Agreement**”). Customer hereby agrees to comply with the terms of any license or other agreement relating to Third-Party Services and Options included in or made accessible to Customer through Valant Applications and understands and acknowledges that its use of the Valant Applications or of such Third-Party Services and Options will constitute its agreement to be bound by the terms of all licensing, subscription and similar agreements relating to such use. Customer understands that its refusal to agree to any such third-party terms and conditions may result in Customer’s inability to access and utilize such third-party products and may limit its ability to utilize certain Valant Applications or Valant Content. Customer understands that if this occurs, Valant shall not be subject to any liability or damages resulting therefrom. Valant does not provide any warranties with respect to Third-Party Services and Options. Any purchase by Customer of Third-Party Options is solely between Customer and the applicable third-party. Valant is not responsible for the availability or the quality, accuracy, integrity, fitness, safety, reliability or any other aspect of such services that Customer may purchase or connect to through the Valant Applications, or any descriptions, promises, or other information related to the foregoing. Customer agrees that Valant may allow third-party providers access to Customer’s data or information as required for the interoperation of Third-Party Services and Options. Any exchange of

data or other interaction between Customer and a third-party provider is solely between Customer and the third-party provider. Valant shall not be responsible for any disclosure, modification or deletion of data or information resulting from such access provided to Third-Party Services and Options.

- d. **Subscription Changes.** Any changes to a current Valant Subscription are subject to the mutual written agreement of the Parties. To the extent the Parties agree to such changes, they will, as applicable, be reflected on a separate Valant System Service Order Form.

2. FEES AND PAYMENT TERMS.

- a. **Fees.** Fees for the Valant Subscription and any Services (individually and collectively the “**Fees**”) shall be set forth on the applicable Valant System Service Order for the Valant Subscription and in applicable Statement(s) of Work for the Services. The [Statement of Work: Implementation Terms](#) (at <https://go.valant.io/Implementation.html> and incorporated by reference to this Agreement) reflect set up and implementation Services for the Initial Term. Fees for Services are posted at <https://go.valant.io/Pricing.html>. Valant reserves the right to change or add new Fees applicable to the Valant Subscription and/or its Services prior to the commencement of any renewal term or Service offering with any such increase effective at renewal. All fees and charges associated with Customer’s account shall be payable whether or not the Services are used during the payment period. The Customer will pay all applicable taxes, including sales or use taxes, payable in respect of the goods and services provided under this Agreement and any penalties or interest owing on those taxes. Unless otherwise specified, payment is due upon receipt of an invoice. Fees or costs which are past due shall bear interest at the rate of one and one-half percent (1.5%) per month. The Customer shall pay all costs of collection, including but not limited to attorneys’ fees and costs in legal proceedings.
- b. **Discounts; Cost Reporting.** It is the Parties’ intent that transactions made pursuant to this Agreement shall be administered in accordance with the federal Anti-Kickback statute set forth at 42 U.S.C. § 1320a-7b(b) (“**AKS**”) and other state or federal laws and regulations as applicable. To the extent Valant provides Customer with discounts, rebates and/or other reductions in price with respect to any Valant Subscription and/or Services (as such may be considered under 42 U.S.C. § 1320a-7b(b)(3) of the AKS), Customer shall fully and accurately disclose such discounts, rebates and other reductions in price in accordance with applicable federal or state cost reporting requirements including, without limitation, as required under the Discount Safe Harbor regulations set forth at 42 C.F.R. § 1001.952(h) or as may otherwise be required in connection with any claims for reimbursement submitted to state or federal health care programs (including, without limitation Medicare and Medicaid). Valant will provide Customer with such information as reasonably necessary to allow Customer to comply with its reporting obligations for all Valant Subscription(s) and/or Services provided pursuant to this Agreement.

3. TERM AND TERMINATION.

- a. **Term.** This Agreement will commence on the Effective Date. The Valant Subscription is effective 30 days after Effective Date, unless otherwise documented within the Valant System Service Order (“Valant Subscription Effective Date”). The Valant Subscription shall continue in effect for 12 months (the “**Initial Term**”) from the Valant Subscription Effective Date. Unless either Party provides written notice of non-renewal at least sixty (60) days prior to the end of the Initial Term or any Renewal Term (as defined below), the Term or Renewal Term (as the case may be) will thereafter automatically renew for additional one (1) year periods (each a “**Renewal Term**”). As used herein, “**Term**” shall include the Initial Term and any Renewal Term, as applicable.
- b. **Termination for Cause.** Either Party may terminate this Agreement if the other Party (i) materially breaches its obligations under the Agreement and fails to render a cure of such breach within thirty (30) days of receipt of the written notice of breach from the other Party, (ii) becomes insolvent, invokes as a debtor any laws relating to the relief of debtors’ or creditors’ rights, or has such laws invoked against it as a debtor, (iii) (in the case of Customer) uses the Valant System or Services in an unauthorized manner; or (iv) (in the case of Customer) provides substantially inaccurate or incomplete information to Valant about Customer’s practice type, size, or configuration.
- c. **Suspension or Termination for Non-Payment.** In the event that Valant does not receive payment of any Fees when due, Valant may, but is not obligated to, suspend or terminate the Valant Subscription, the Services, and/or the Agreement, as applicable, at its sole discretion, after providing Customer written notice that it is delinquent in payment and provide Customer with ten (10) business days to bring its account current.

- d. **Termination for Legislative or Regulatory Change.** In the event that a federal or state legislative or regulatory change or determination during the Term would, as determined by Valant, have a material adverse impact on Valant's ability to provide Customer with the Services and/or on the Valant System, Valant may terminate the Agreement with 60 days' notice to the Customer without liability or penalty.
- e. **Effect of Termination.** Upon termination of this Agreement for any reason, Valant shall cease providing the Valant System and the Services to Customer and Customer's access to and rights to use the Valant System shall end. Confidential Information shall be returned or destroyed as set forth in Section 8.f).

4. **CUSTOMER RESPONSIBILITIES.**

- a. **Customer Use.** Customer use of the Valant System, and Valant Subscription are governed by the [Terms and Conditions of Use](https://go.valant.io/Terms-of-Use.html) (at <https://go.valant.io/Terms-of-Use.html>), which are incorporated by reference into this Agreement.
- b. **Fraud, Violations.** Use of or access to the Valant System not in accordance with this Agreement is strictly prohibited. Valant may suspend or terminate Customer's use of the Valant System, as described in Section 4 Term and Termination, in the event that fraud, violation of law, or conduct that violates this Agreement and is in any way connected to Customer's account occurs.
- c. **Reservation of Rights.** Except as expressly set forth in this Agreement, no rights or implied licenses in Valant's intellectual property are granted to Customer by this Agreement, and Valant reserves all rights not explicitly granted to Customer under this Agreement.

5. **DATA AND INTELLECTUAL PROPERTY.**

- a. **Ownership of Intellectual Property Rights.** Valant or its third-party licensors shall own and retain all intellectual property rights in the Valant System, the Valant Applications, the Valant Content, Documentation, and Valant trademarks. Valant will retain, and the Customer hereby assigns to Valant, any and all intellectual property rights in content that Valant provides to or configures for Customer, other than any rights Customer may have in any of its trade or service marks used in such content. Valant grants to Customer a non-exclusive, non-transferable royalty free right to use such content during the term of the Agreement for its internal business purposes as part of its use of the Valant Subscription. With regard to any templates or other content that Customer may create ("**Customer Templates**"), Customer represents that it owns or has all necessary rights to upload and use any such Customer Templates, and, where Customer owns the intellectual property rights, it grants to Valant a non-exclusive, perpetual and royalty free license to create derivative works of such Customer Templates, including to permit Valant's use of such derivative works in Valant's Services to other customers. Customer or its third-party licensors own and retain all intellectual property rights in the Customer trademarks.
- b. **Ownership of Data.** Valant acknowledges that as between the parties, the Customer data is owned exclusively by Customer. For the avoidance of doubt, however, De-Identified Data (as defined below) will be retained as the property of Valant and Valant may, without limitation, use, disclose, license and sell such De-Identified Data for any legally permissible purpose without restriction.
- c. **Third-Party Content.** Valant will provide Customer access to certain assessments and measures within the Valant System. Customer acknowledges that it is solely responsible for obtaining any necessary licensing and copyright permission to use additional third-party assessments and measures within the Valant System. Customer represents that it has obtained all necessary rights to upload and use any such content in the Valant System and will submit to Valant proof of such permission at Valant's request.
- d. **Use of Data.** Valant shall use or disclose the Customer data: (i) as necessary to perform its duties under this Agreement and the BAA; and (ii) to develop and improve the Valant System, Valant Applications, Valant Content, Documentation, Services and other Valant products and services. In regard to De-Identified Data, Valant shall, in addition to the foregoing rights, also have the right to use the De-Identified Data for any legally permissible purpose without restriction.
- e. **Data Security.** Valant has and shall maintain a written data security policy containing commercially reasonable technical, administrative and physical safeguards to protect the Customer data that shall be consistent with industry standards for protection of clinical data. Customer acknowledges that Valant shall have the right to modify and update its data security

process and procedures, from time to time, in its sole discretion. Without limiting the foregoing, only Customer employees and contractors who have a need to know will be permitted to access the Customer data.

6. GENERAL REPRESENTATIONS AND WARRANTIES.

- a. **Duly Qualified.** Each Party represents and warrants to the other that it is duly organized or incorporated and validly existing under the laws of the jurisdiction in which it does business, and has all requisite powers, licenses and permits to perform its duties and obligations under this Agreement.
- b. **Compliance with Laws.** Each Party represents and warrants to the other that it shall comply with all applicable state and federal laws and regulations in connection with the performance of its respective obligations under this Agreement and (in the case of Customer) use of the Valant System and Services, including, without limitation, those related to fraud and abuse, AKS, 42 CFR Part 2, and HIPAA.
- c. **Excluded Party.** Each Party represents and warrants to the other that neither it nor any of its affiliates or their respective current officers, directors or employees: (i) are currently excluded, debarred, suspended or otherwise ineligible to participate in a federal or state healthcare program, (ii) have been excluded, debarred, suspended or otherwise declared ineligible to participate during the last five (5) years in a federal or state healthcare program, or (iii) have been convicted of a criminal offense related to the delivery or provision of healthcare items or services during the last five (5) years. Each Party will take prompt action to correct any known non-compliance with any exclusion law or regulation and will notify the other if it becomes aware of any such exclusion.

7. WARRANTY.

- a. **Limited Warranty.** Valant warrants that the Services will be performed in a professional and workmanlike manner. **CUSTOMER'S EXCLUSIVE REMEDY, AND VALANT'S SOLE OBLIGATION, FOR BREACH OF WARRANTY SHALL BE, AT VALANT'S OPTION, TO USE COMMERCIALY REASONABLE EFFORTS TO REPERFORM THE NON-CONFORMING SERVICE OR TO PROVIDE CUSTOMER WITH A PRORATED REFUND IN THE FORM OF A CREDIT.**
- b. **Warranty Exclusions.** Valant's limited warranty does not apply and shall be void and of no effect if: (i) the Services are not used in accordance with Valant's specifications, labeling, or instructions; (ii) the Services are not functioning due to viruses through no fault of Valant; and (iii) the Service's non-conformance is due to a Force Majeure Event.
- c. **DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE VALANT SYSTEM, INCLUDING THE VALANT APPLICATIONS AND VALANT CONTENT, ARE PROVIDED STRICTLY ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND VALANT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, VALANT DOES NOT REPRESENT OR WARRANT THAT THE VALANT SYSTEM, VALANT APPLICATIONS, AND/OR VALANT CONTENT WILL MEET CUSTOMER'S REQUIREMENTS OR WILL BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE OR SYSTEMS OR OPERATE ERROR-FREE OR WITHOUT INTERRUPTION; THAT ALL ERRORS WILL BE CORRECTED; THAT THE VALANT SYSTEM, INCLUDING THE VALANT APPLICATIONS AND VALANT CONTENT, WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK; OR THAT CUSTOMER'S SPECIFIC REQUIREMENTS WILL BE SATISFIED. CUSTOMER ACKNOWLEDGES THAT VALANT DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE VALANT SYSTEM AND THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. VALANT EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY INCORRECTLY ENTERED OR INPUT CUSTOMER DATA OR ANY INACCURATE INFORMATION PROVIDED BY ANY CUSTOMER. VALANT DOES NOT ENSURE THE LEGALITY, ACCURACY OR COMPLETENESS OF THE VALANT CONTENT REGARDLESS OF WHETHER SUCH VALANT CONTENT WAS CREATED BY VALANT OR THIRD PARTIES (INCLUDING, WITHOUT LIMITATION, STRATEGIC PARTNERS OR GOVERNMENTAL AGENCIES).**

8. CONFIDENTIALITY.

- a. **Confidential Information.** For purposes of this Agreement, Confidential Information means all tangible and intangible information and materials being disclosed in connection with this Agreement by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), in any form or medium (and without regard to whether the information is owned by a Party or by a third party), that satisfy at least one of the following criteria: (i) information related to the Disclosing Party's, its affiliates'

or its third party licensors' or vendors' trade secrets, pricing, business plans, strategies, forecasts, operations, methods of doing business, financial data, or other proprietary or confidential business or technical information; (ii) information designated as confidential in writing by the Disclosing Party or information that the Receiving Party should reasonably know to be information that is of a confidential or proprietary nature; or (iii) any information derived from, or developed by reference to or use of, any information described in the preceding clauses (i) and (ii). Confidential Information shall not include information that: (a) is in the public domain or is otherwise publicly known; (b) was previously known to the Receiving Party free of any obligation to keep it confidential; (c) was rightfully received by the Receiving Party from a third party whose disclosure would not violate a confidentiality obligation and which disclosure was not in breach of this Agreement; (d) was subsequently and independently developed by personnel of the Receiving Party without reference to the Confidential Information disclosed under this Agreement; or (e) was approved for release by the written authorization of the Disclosing Party. Notwithstanding any language to the contrary, the Valant System and Services pricing and this Agreement are Valant's Confidential Information.

- b. Nondisclosure.** Each Receiving Party shall keep confidential all Confidential Information and not disclose or reveal such information to any third party without the express prior written consent of the Disclosing Party, except in regard to disclosures to such Party's personnel on a need-to-know basis in connection with such Party's respective obligations under this Agreement. Each Receiving Party will take the same measures to protect the Confidential Information of the Disclosing Party in its possession or control that it takes to protect its own Confidential Information, but in no event less than reasonable measures. In no event will Customer permit any disclosure of Valant's Confidential Information to a direct or indirect competitor of Valant.
- c. HIPAA.** The Valant Subscription and Services require Valant to access, host and utilize Customer materials that may contain "**Protected Health Information**" or "**PHI**" as such term is defined under 45 CFR § 160.103, except limited to the PHI created, received, transmitted or maintained by Valant for or on behalf of Customer. Accordingly, prior to the commencement of the Valant Subscription and Services, Valant and Customer agree to enter into a separate Business Associate Agreement (the "**BAA**") a copy of which is attached to and incorporated herein as **Exhibit "B"**. To the extent there is a conflict between the BAA and this Agreement regarding the treatment and handling of PHI, the BAA will control. "**HIPAA**" collectively means the Health Insurance Portability and Accountability Act of 1996 and its implementing rules and regulations codified in 45 CFR Parts 160, 162, and 164 as amended or modified from time to time, including the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery Act of 2009, and by the Affordable Care Act. Valant is expressly permitted to de-identify Customer Provided Materials in accordance with HIPAA ("**De-Identified Data**"). For the avoidance of doubt, Protected Health Information shall not be considered Confidential Information subject to Sections 8(a) and 8(b), but shall be subject to the use and disclosure limitations outlined in the BAA.
- d. Substance Use Disorder Patient Records.** The Valant Subscription and Services require Valant to access, host and utilize Customer materials that may contain substance use disorder patient records which are maintained in connection with the performance treatment programs that are subject to 42 CFR Part 2 (the "**Part 2 Regulations**"). In the event Customer is subject to the Part 2 Regulations it acknowledges that it may be prohibited from disclosing such information for certain purposes, such as patient treatment, without specific written consent of the subject individual. Customer shall be responsible for ensuring that it has obtained all necessary consents that may be required under the Part 2 Regulations relative to patient records subject to the Part 2 Regulations and use of the Valant System and Services to access, host and utilize such patient records. Further, Valant acknowledges that to the extent, through the Valant System, that it receives, stores, processes or otherwise deals with any information covered by the Part 2 Regulations, it is fully bound by the provisions of the Part 2 Regulations and undertakes to resist in judicial proceedings any effort to obtain access to information pertaining to Customer's patients otherwise than as expressly provided for in the Part 2 Regulations.
- e. Injunctive Relief.** The Parties agree that any breach of this Section 8 by the Receiving Party may cause the Disclosing Party irreparable injury not adequately compensable by monetary damages. Accordingly, in addition to any rights otherwise available at law, in equity or by statute, the non-breaching Party may seek injunctive and other equitable relief in any court of competent jurisdiction without the need for posting a bond.
- f. Return of Confidential Information.** Upon the expiration or earlier termination of this Agreement, or during the Term upon the written request of the Disclosing Party, the Receiving Party shall return or destroy the Disclosing Party's Confidential Information. In such event, the Receiving Party shall certify the Confidential Information's return or destruction in writing and do so within thirty (30) days of such request or such triggering event.

- g. Feedback.** Customer acknowledges that Valant is not obligated to and will not treat as Customer Confidential Information any suggestion or idea provided by Customer regarding the Valant System or the Service (“**Feedback**”). Moreover, Customer understands and agrees that such Feedback shall be deemed to be the intellectual property of Valant and will be treated as Valant Confidential Information. Nothing in this Agreement or in the Parties’ dealings arising out of or related to this Agreement will restrict Valant’s right to use, profit from, disclose, publish, or otherwise exploit any Feedback, without compensation to Customer, or provide Customer with any rights in the Valant System and/or the Services. Feedback does not include Customer’s Confidential Information.

9. INDEMNITIES.

- a. Valant Indemnification.** Valant hereby agrees to indemnify, defend, and hold harmless Customer, from and against any third-party claim that the Valant System infringes any third-party patent, copyright or trademark. In the event of such claim, Valant may, in its sole discretion, (i) modify the Valant System to make it non-infringing, (ii) obtain a license or otherwise procure the right to allow the continued use of the Valant System, or (iii) refund a pro-rata portion of the fees paid by Customer for the Valant System upon Customer ceasing use of the Valant System. The foregoing notwithstanding, Valant shall have no obligations hereunder in the event the infringement claim arises due to (a) Valant’s compliance with Customer design or specification requests, (b) use of the Valant System by Customer other than in accordance with instructions provided by Valant, (c) use of the Valant System in combination with other products, services, equipment, devices, software, systems, or data not sold or provided by Valant and the Valant System is not infringing in isolation, or (d) continued use by Customer of the Valant System after Valant has advised Customer in writing to cease use of the Valant System due to claimed infringement. This provision sets forth Customer’s exclusive rights and remedy in the event of a claim of infringement.
- b. Customer Indemnification.** Customer hereby agrees to indemnify, defend, and hold harmless Valant, its affiliates and their respective officers, directors, employees and agents (individually and/or collectively the “**Valant Indemnitees**”), from and against any and all third party claims, demands, actions, damages, costs, judgements and other expenses to the extent arising out of or otherwise related to (i) the improper or unlawful use of the Valant System by Customer or its personnel, (ii) any grossly negligent or malicious act or omission by Customer or its personnel, (iii) failure by Customer to obtain any required consents or other authorizations as necessary for Valant to provide the Valant System, the Services or as otherwise required under applicable law, and/or (iv) Customer’s breach of its material obligations under the Agreement and/or the BAA, and/or (v) Customer’s failure to comply with all applicable federal and state laws.
- c. Indemnity Process.** A Party’s respective indemnification obligations as set forth in this Agreement shall be subject to the following: (i) the Party seeking indemnification shall promptly notify the indemnifying Party of a claim for which indemnification applies under this Agreement and provide reasonable assistance and cooperation to the indemnifying Party, (ii) the indemnifying Party shall control such defense and negotiations, shall notify the indemnified Party that it is doing so, and shall retain the right to make final decisions with respect to the defense or settlement thereof, and (iii) an indemnified Party may retain its own counsel, at its cost, to monitor any such action.

10. LIMITATION OF LIABILITY.

- a. SUBJECT TO SECTION 10.c BELOW, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR OTHER SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROSPECTIVE PROFITS, LOST DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHER TORT, REGARDLESS OF THE FORESEEABILITY OR THE CAUSE THEREOF. VALANT SHALL HAVE NO LIABILITY FOR THE FINANCIAL LOSSES, DAMAGES, AND/OR PENALTIES SUSTAINED BY THE CUSTOMER DUE TO A FAILURE OF THE VALANT SYSTEM, A VALANT APPLICATION, VALANT CONTENT, AND/ OR SERVICES TO COMPLY WITH AN APPLICABLE FEDERAL OR STATE STANDARD, INCLUDING BUT NOT LIMITED TO A STANDARD RELATED TO THE PROVISION OF PROFESSIONAL SERVICES.**
- b. SUBJECT TO SECTION 10(c) BELOW, NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE CUMULATIVE LIABILITY OF VALANT AND ITS AFFILIATES FOR ALL CLAIMS AND LOSSES FOR ANY CAUSE WHATSOEVER, INCLUDING THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE VALANT SYSTEM, A VALANT APPLICATION, VALANT CONTENT, AND/OR THE SERVICES, AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED THE AGGREGATE FEES PAID OR PAYABLE BY CUSTOMER TO VALANT UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.**

- c. **THE LIABILITY EXCLUSIONS AND LIMITATIONS SPECIFIED IN SECTION 10(a) AND 10.b ABOVE SHALL NOT APPLY TO: (i) FEES AND OTHER AMOUNTS THAT ARE DUE TO VALANT PURSUANT TO THIS AGREEMENT, ANY STATEMENT(S) OF WORK AND/OR VALANT SYSTEM SERVICE ORDER FORMS; (ii) BREACH OF THE CONFIDENTIALITY PROVISIONS SET FORTH IN SECTION 8; AND (iii) BREACH OF THE INTELLECTUAL PROPERTY PROVISIONS SET FORTH IN SECTION 5 OF THIS AGREEMENT.**

11. **DISPUTE RESOLUTION.** The Parties agree to use good faith efforts to use negotiations to resolve any dispute, controversy or claim arising out of or otherwise related to the execution, interpretation and/or performance of this Agreement before initiating any legal action. In the event a Dispute is not resolved within sixty (60) days following the receipt of a written Dispute notice, the Parties agree to attempt to resolve the matter through non-binding mediation. The location of such mediation and the selection of the mediator to be mutually agreed upon with the costs shared equally between the Parties. Should the Dispute remain unresolved following such mediation attempt, the Dispute shall be solely and finally settled by expedited arbitration, subject to Section 15.h below, conducted in accordance with the Expedited Procedures of the Commercial Arbitration Rules (the “AAA Rules”) of the American Arbitration Association (the “AAA”). Judgment on the arbitration award may be entered and enforced in any court having jurisdiction over the parties or their assets. It is the intent of the parties that the arbitration provisions hereof be enforced to the fullest extent permitted by applicable law, including the Federal Arbitration Act, 9 U.S.C. § 2.

12. **ACCESS TO RECORDS.** This provision shall apply to the extent 42 C.F.R. § 420.302, as amended, and Section 1861(v)(1)(1) of the Social Security Act, as amended, are applicable. Upon the written request of the Secretary of the Department of Health and Human Services (the “Secretary”), or upon request of the Comptroller General, or any of their duly authorized representatives, Valant shall, until the expiration of four (4) years after furnishing items and Services pursuant to this Agreement, make available the terms and conditions set forth in this Agreement and all Valant’s related books, records and documents as necessary to verify the nature and extent of the costs charged to Customer hereunder. Further, and upon the written request of the Secretary or the Comptroller General or any of their duly authorized representatives, if Valant carries out its duties under this Agreement, either directly or through a related organization, through a subcontract with a value or cost of \$10,000.00 or more over a twelve (12) month period, Valant and its related organization, if applicable, shall make available to the Secretary the contracts, books, documents and records that are necessary to verify the nature and extent of such costs.

13. **NOTICES.** Except as otherwise permitted by Section 14 below, any notice required to be given under this Agreement, including any Statement(s) of Work hereto, shall be in writing and shall be deemed effectively given upon receipt or refusal and, unless otherwise set forth herein, shall be sent by hand delivery, overnight courier; U.S. Postal Service, certified or registered mail (return receipt requested), addressed to the Parties at the address set forth in the Preamble. Either Party may update the address to which notices are to be sent to it by providing written notice in accordance with the terms of this Agreement.

14. **ELECTRONIC TRANSACTIONS AND COMMUNICATIONS.** By entering into this Agreement Customer understands that Valant may, from time to time, send Customer communications via electronic mail regarding the Valant System, Valant Subscription, and/or the Services, including, but not limited to: (a) notices about Customer’s Valant Subscription, use of the Valant System and/or the Services (which may include notices concerning violations of use); (b) updates about the Valant offerings; and (c) promotional information and materials regarding Valant’s offerings. Valant will provide Customer the opportunity to opt-out of receiving promotional information and materials, but Customer acknowledges that the use by Valant of email to provide notices and updates is essential to performance under the Agreement. Furthermore, the Services give Customer the ability to enter into agreements, authorizations, and applications; order lab tests; prescribe medications; or engage in other transactions electronically. CUSTOMER HEREBY ACKNOWLEDGES THAT ITS ELECTRONIC SUBMISSIONS VIA THE SERVICES IN CONNECTION WITH SUCH ACTIVITIES CONSTITUTE ITS ACKNOWLEDGMENT THEREOF AND ITS AGREEMENT AND INTENT TO BE BOUND BY SUCH AGREEMENTS AND TRANSACTIONS.

15. **MISCELLANEOUS.**

- a. **Headings.** The headings in this Agreement are intended for convenience only and shall not be used to interpret this Agreement.
- b. **Force Majeure.** Neither Party shall be liable for any failure or delay in the performance of any of its obligations under this Agreement (except payment obligations) to the extent the delay is attributable to the occurrence of any cause beyond the reasonable control of such Party (each such cause, a “Force Majeure Event”). Force Majeure Events may include acts of

God, acts of a public enemy, acts of a civil or military authority, Customer acts or omissions, terrorist acts, riots, wars, fires, floods, earthquakes or other natural occurrences, pandemics, trade embargos, acts of government, labor disputes, strikes, delays in transportation, failures or delays in receiving electronic data, non-performance by suppliers and vendors, or internet outages. Upon the occurrence of such Force Majeure Event, the duties and obligations of the Parties shall be suspended for the duration of the Force Majeure Event.

- c. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.
- d. **Assignment.** Customer shall not assign, delegate or otherwise transfer this Agreement (whether by operation of law or otherwise) in whole or in part, without the prior written consent of Valant.
- e. **Subcontract.** Valant may subcontract any part of its obligations under this Agreement; provided, however, that Valant remains primarily liable for the performance of any such subcontracted obligations.
- f. **No Third-Party Rights.** This Agreement is for the benefit of and shall be binding upon the parties. No third party, including any affiliate of Customer, shall be considered a third-party beneficiary under this Agreement.
- g. **Independent Contractor.** Nothing in this Agreement will make Customer and Valant partners, joint ventures, or otherwise associated in or with the business of the other. Valant is and shall always remain an independent contractor. Neither Party shall be liable for any debts, accounts, obligations, or other liabilities of the other Party, its agents, contractors, or employees. Neither Party is authorized to incur debts nor other obligations of any kind on the part of or as agent for the other except as may be specifically authorized in writing for a particular instance or an authorized series of instances.
- h. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Washington, without regard to any choice or conflict of law provision or rule thereof. The Parties hereby designate all courts of record sitting in King County in the State of Washington, both state and federal, as forums where any action, suit or proceeding in respect of or arising out of this Agreement, or the transactions contemplated by this Agreement shall be brought and hereby consent to the jurisdiction and venue of such courts.
- i. **Waiver of Jury Trial.** EACH PARTY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY, RELATED TO OR OTHERWISE ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.
- j. **Attorneys' Fees.** In the event legal action is brought to enforce the terms of this Agreement and/or any related Statement of Work(s), including an action to compel payment of Fees owed pursuant to this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs. For purposes of this provision, the "prevailing party" shall be determined by the court having jurisdiction over the matter.
- k. **Rights Cumulative.** All rights and remedies conferred under this Agreement or by law shall be cumulative and may be exercised singularly or concurrently.
- l. **Waiver.** The failure by either Party to enforce any term shall not be deemed a waiver of future enforcement of that or any other term.
- m. **Severability.** If any provision of this Agreement is adjudged to be invalid, void, or unenforceable, the parties agree that the remaining provisions of this Agreement shall not be affected thereby, that the provision in question may be replaced by the lawful provision that most nearly embodies the original intention of the parties, and that this Agreement shall in any event otherwise remain valid and enforceable.
- n. **Publicity.** Neither Party shall issue a press release or generally available marketing materials referencing the other Party without first obtaining written consent from such Party. The foregoing notwithstanding, Valant may identify Customer as a Valant customer on its website and marketing materials, including without limitation, use of Customer's logos, trademarks and service marks for such limited purpose; provided, that Valant comply with Customer's trademark/branding usage guidelines (if any).

- o. Survival.** Where the Parties’ rights and obligations under this Agreement by their terms or by their nature extend or are contemplated to extend beyond the end of the Term, they will be deemed to survive any termination or expiration of this Agreement for as long as necessary to give full force and effect to such rights and obligations of the Parties.
- p. Entire Agreement.** This Agreement, (consisting of these terms, any System Sales Order, any [Terms and Conditions of Use](#), any Pricing List, any [end user licensing terms](#), and any other document incorporated herein, or incorporated by reference herein) represents the complete and final agreement concerning the subject matter hereof and supersedes and replaces any and all prior or contemporaneous understandings or agreements, written or oral, between the Parties regarding the subject matter contained herein. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party. This Agreement may only be amended by written agreement of the Parties.

IN WITNESS WHEREOF, the authorized representative of the Parties set forth their signatures below.

VALANT MEDICAL SOLUTIONS, INC.

CUSTOMER: Mt. Diablo Unified

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

EXHIBIT A: Valant Master Services Agreement: System Service Order Form

Bill To: Mt. Diablo Unified
 Jessica Pozos
 1936 Carlotta Drive
 Concord, CA 94519

Ship To: Mt. Diablo Unified
 Jessica Pozos
 1936 Carlotta Drive
 Concord, CA 94519

Service	Unit Price	Up to # of user(s)	One-Time Fees	Recurring Fees
Office Staff Module - Monthly Subscription Monthly (\$ per Month of Service)	10.30	6		\$61.80
Power Therapist - Monthly Subscription Monthly (\$ per Month of Service)	58.71	47		\$2,759.37

NOTES:	Contract Term	12 months
Additional fees may apply. See Pricing List: Additional Services or at https://go.valant.io/Pricing.html for details.	Subtotal	\$33,854.04
Additional Clinical Provider Seats can be added at the discounted rate of \$58.71/month per provider. Additional Non Clinical Seats can be added at the discounted rate of \$10.30/month per seat.	Discount	\$0.00
Customization work for mobile notes or reporting will be billed at \$150 per hour when requested. Estimate of 20 hours of professional services for customized work in 2023 for a total of \$3,000.		
eSignature fees are billed based on usage. Estimated usage of 100 electronic signature requests at \$1/per request in 2023 for a total of \$100.		
Each year, fee increases are capped at no more than 5% in the above fee rates.		
Unless otherwise specified, invoicing for product(s) and service(s) shall begin on the Valant Subscription Effective Dates, as defined herein.		
Unless otherwise specified, invoicing for product(s) and service(s) shall begin on the Valant Subscription Effective Date, as defined herein.	Tax	\$0.00
	Contract Total	\$33,854.04

VALANT MEDICAL SOLUTIONS, INC.

CUSTOMER: Mt. Diablo Unified

By:
 Name:
 Title:
 Date:

By:
 Name:
 Title:
 Date:

EXHIBIT B: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “BAA”) by and between Customer (“Covered Entity”) and Valant Medical Solutions, Inc. (“Valant” or “Business Associate”) is made and entered into as of the date of signature by both Parties (the “Effective Date”). Capitalized terms used and not defined herein in the body of the BAA or Section 4.7 below shall have the meanings given them in the Agreement or in the HIPAA Rules (as defined below).

A. WHEREAS, Valant will perform certain services (the “Services”) on behalf of Customer, as set forth in that certain Master Services Agreement between the Parties (the “Agreement”) pursuant to which Customer (in its role as a Covered Entity under HIPAA) may disclose to Valant (in its role as a Business Associate under HIPAA) certain protected health information (“PHI”) of its patients; and

B. WHEREAS, Business Associate and Covered Entity are required to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191 (the “Act”), the privacy standards adopted by the U.S. Department of Health and Human Services (“HHS”) as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and E (the “Privacy Rule”), the security standards adopted by HHS as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and C (the “Security Rule”) 45 C.F.R. part 164, subpart D (the “Breach Notification Rule”), and the privacy provisions (Subtitle D) of the Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of Pub. L. 111-5, and its implementing regulations (the “HITECH Act”) (collectively referred to herein as the “HIPAA Rules”).

NOW, THEREFORE, the Parties therefore agree:

1 Business Associate Obligations and Permitted Uses and Disclosures

1.1. Use and Disclosure of Protected Health Information. Business Associate may use and disclose PHI to render the Services to or on behalf of the Covered Entity as permitted or required under this BAA or as required by applicable law (“Law”) but may not otherwise use or disclose such PHI for any other purpose. Business Associate will not, and will assure that its employees, other agents and contractors do not use or disclose PHI in any manner that would constitute a violation of HIPAA and/or any other Law if so used or disclosed by Covered Entity. Without limiting the generality of the foregoing, Business Associate is permitted to use or disclose PHI as set forth below:

(a) The Business Associate may use PHI for Business Associate’s proper management and administration or to carry out its legal responsibilities.

(b) Business Associate may disclose PHI to a third party for Business Associate’s proper management and administration or to carry out its legal responsibilities, provided that the disclosure is required by Law or Business Associate obtains reasonable assurances in writing from the third party to whom such PHI is to be disclosed that the third party will: (i) protect the confidentiality of the PHI, (ii) only use or further disclose the PHI as required by Law or for the purpose for which the PHI was disclosed to the third party, and (iii) notify Business Associate of any instances of which such third-party is aware in which the confidentiality of the PHI has been breached.

(c) Business Associate may use PHI to provide Data Aggregation services relating to the Health Care Operations of Covered Entity if requested by Covered Entity pursuant to the Agreement.

(d) Business Associate may de-identify PHI in accordance with 45 C.F.R. part 164 and may, without limitation, use, disclose, license and sell such de-identified health information for any legally permissible purpose without restrictions. For the avoidance of doubt, de-identified data will be retained as the property of Valant; however, the parties acknowledge that the Customer data (including PHI) shall be owned by Customer. The rights afforded by this provision shall survive the expiration or termination of this BAA.

1.2. Safeguards. Business Associate shall implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, and comply with the applicable requirements of the Security Rule with respect to Electronic PHI to prevent the use or disclosure of such PHI other than as provided for by this BAA.

1.3. Minimum Necessary Standard. Business Associate shall limit its use, disclosure or request of PHI, to the extent practicable, to a Limited Data Set or, if needed by Business Associate, to the Minimum Necessary.

1.4. Mitigation. Business Associate will take reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this BAA. Business Associate shall cooperate in Covered Entity’s breach analysis and/or risk assessment, if requested.

1.5. Subcontractors. To the extent that Business Associate uses one or more agents or Subcontractors to perform its obligations under any agreement with Covered Entity and such agents or Subcontractors create, receive, maintain or transmit PHI on behalf of Business Associate, Business Associate shall cause each such agent or Subcontractor to agree in writing to comply with the applicable provisions of HIPAA (including implementation of reasonable and appropriate safeguards to protect PHI) and the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI under this BAA.

1.6. Reporting of Improper Disclosures of PHI. Business Associate shall, within ten (10) business days of Discovery, report to Covered Entity any confirmed use or disclosure of PHI not provided for by this BAA of which it becomes aware, including any Breach of Unsecured PHI as required by 45 C.F.R. 164.410, and any confirmed Security Incident. The parties agree that this Section 1.6 satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. For purposes of this BAA, such Unsuccessful Security Incidents include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service and any combination of the above, so long as no such Unsuccessful Security Incident results in unauthorized access, use, disclosure, modification or destruction of PHI or interference with information system operations.

1.7. Access to Information. To the extent that Business Associate maintains PHI in a Designated Record Set, Business Associate shall provide Covered Entity with access to such PHI in accordance with Covered Entity's written request no later than ten (10) business days after receipt of such written request by Covered Entity pursuant to 45 CFR 164.524. If Business Associate receives a request for access to PHI directly from an Individual, then Business Associate will forward such request to Covered Entity within two (2) business days.

1.8. Availability of PHI for Amendment. To the extent that Business Associate maintains PHI in a Designated Record Set, Business Associate shall amend such PHI in accordance with Covered Entity's written request no later than fifteen (15) business days after receipt of such request by Covered Entity pursuant to 45 CFR 164.526. If the Business Associate receives a request for amendment to PHI directly from an Individual, then the Business Associate will forward such request to Covered Entity within two (2) business days.

1.9. Accounting of Disclosures. Business Associate shall keep records of all disclosures of PHI made by Business Associate (the "Disclosure Accounting") on an ongoing basis for a period of at least six (6) years, to the extent required by the HIPAA Rules. Business Associate shall provide the Disclosure Accounting to Covered Entity (or to an individual, if so directed by Covered Entity) (a) no later than fifteen (15) business days after receipt of written request for such Disclosure Accounting by Covered Entity pursuant to 45 CFR 164.528 or (b) in accordance with the HIPAA Rules.

1.10. Availability of Books and Records. Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary and the Covered Entity for purposes of determining Covered Entity's and Business Associate's compliance with HIPAA.

1.11. Performance of Obligation of Covered Entity. To the extent Business Associate is to carry out an obligation of Covered Entity under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in performance of such obligation.

2 Obligations of Covered Entity

2.1. Permissible Requests. Covered Entity will not request that Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if carried out directly by Covered Entity.

2.2. Notice of Restrictions. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with the relevant provisions of HIPAA or otherwise, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. In addition, Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose such individual's PHI to the extent that such change may affect Business Associate's use or disclosure of PHI.

2.3. Minimum Necessary Information. Covered Entity represents that, to the extent Covered Entity provides PHI to Business Associate, such information is the minimum necessary PHI for the accomplishment of Business Associate's purpose.

2.4. Consents/Authorizations. Covered Entity represents that, to the extent Covered Entity provides PHI to Business Associate, Covered Entity has obtained the consents, authorizations and other forms of legal permission required under the HIPAA Rules and other applicable Law.

3 Term and Termination

3.1. Term. This BAA shall terminate on the earlier of (i) the date on which the Agreement terminates; or (ii) the date of termination of this BAA for cause or otherwise. Notwithstanding the foregoing, the protections of this BAA will remain in place until all of the PHI is destroyed or returned to Covered Entity; or if it is infeasible to return or destroy such PHI, the protections of this BAA will be extended to such PHI in accordance with the termination provisions of this BAA.

3.2. Termination for Breach. This BAA shall terminate upon the earlier to occur of: (a) termination of the Agreement and all System Service Orders, or (b) receipt by Business Associate of Covered Entity's written notice to terminate in the event Business Associate violates a material term of this BAA and fails to cure such violation to the reasonable satisfaction of Covered Entity within thirty (30) calendar days of Business Associate's receipt of such written notice that Business Associate has violated a material term of this BAA.

3.3. Return or Destruction of PHI. Promptly after the expiration or termination of this BAA, Business Associate will either return to Covered Entity or destroy, delete or erase all PHI then in Business Associate's possession; provided, however, that to the extent that Business Associate and Covered Entity mutually determine that the return or destruction of such PHI is not feasible, then the terms and provisions of this BAA will survive the expiration or termination of this BAA and such PHI may be used or disclosed only for the purposes that prevented Business Associate's return or destruction of such PHI.

3.4. Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA.

4 Miscellaneous

4.1. No Third-Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

4.2. Conflicts. In the event of any inconsistency or conflict between the terms and conditions of this BAA and the Agreement, the terms and conditions of this BAA will supersede and control in regard to HIPAA and the subject matter of this BAA.

4.3. Audit Rights. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a time and manner reasonably designated by

the Secretary, for purposes of the Secretary determining Covered Entity's and/or Business Associate's compliance with HIPAA.

4.4. Amendments. The Parties may amend this BAA only pursuant to a written agreement executed by the Parties.

4.5. Notices. All notices required to be given to either Party under this BAA will be in writing and sent by traceable carrier to such Party's address indicated below, or such other address as a Party may indicate by at least 10 calendar days' prior written notice to the other Party. Notices will be effective upon receipt.

If to the Covered Entity:

Mt. Diablo Unified
Attn: Jessica Pozos or Legal Counsel
1936 Carlotta Drive
Concord,
CA 94519

If to Business Associate:

Valant Medical Solutions, Inc.
PO Box 21405
Seattle, WA 98111-3405
Attention: Legal Department

4.6 Definitions. Capitalized terms used but not otherwise defined in this BAA shall have the same meaning as those terms in the HIPAA Rules. A regulatory reference in this BAA means the section as in effect or as amended, and for which compliance is required.

(A) Breach: has the meaning given to such term at 45 CFR § 164.402.

(B) Breach Notification Rule: means the final regulatory provisions set forth at 45 CFR Subtitle A, Subchapter C, Parts 160 and 164, Subparts A and D.

(C) Business Associate: has the meaning given to such term at 45 CFR § 160.103.

(D) Covered Entity: has the meaning given to such term at 45 CFR § 160.103.

(E) Discovery: has the meaning given to such term at Subpart D of 45 CFR Part 164.

(F) Electronic Protected Health Information or ePHI: means "electronic protected health information" as defined in 45 CFR § 160.103 but limited to the ePHI created, received, maintained, or transmitted by Business Associate for or on behalf of Covered Entity.

(G) Individual: has the same meaning given to such term at 45 CFR § 160.103, as well as a person who qualifies as a personal representative in accordance with the HIPAA Rules.

(H) Privacy Rule: means final regulatory provisions set forth at 45 CFR Parts 160 and 164, Subparts A and E, as amended from time to time.

(I) Protected Health Information or PHI: have the same meaning as "protected health information" in 45 CFR § 160.103, but limited to the information used, disclosed, created, received, maintained, or transmitted by Business Associate for or on behalf of Covered Entity.

(J) Secretary: means the Secretary of the Department of Health and Human Services and his or her designee.

(K) Security Incident: has the meaning given to such term at 45 CFR § 164.304.

(L) Security Rule: means final regulatory provisions set forth at 45 CFR Parts 160 and 164, Subparts A and C.

4.7. Severability. If any provision of this BAA is held by a court of competent jurisdiction to be illegal, invalid, or

unenforceable, the remaining provisions of this BAA shall not be affected.

4.8. Counterparts. This BAA may be executed in counterparts, all of which together shall constitute a single agreement and any one of which shall be deemed an original. A facsimile copy of a signed counterpart shall be treated as an original.

4.9. Waiver. A waiver by Business Associate or Covered Entity of any requirement of this BAA shall not be construed as a continuing waiver, a waiver of any other requirement, or a waiver of any right or remedy otherwise available.

4.10. Entire Agreement. This BAA, together with all exhibits and amendments, if applicable, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, Business Associate Agreements, negotiations, commitments, and any other writing and communication by or between the parties with respect to the subject matter hereof. The parties agree to negotiate in good faith to amend this BAA from time to time as is necessary for the parties to comply with any amendments to the HIPAA Rules.

IN WITNESS WHEREOF, the Parties have caused this BAA to be executed as of the date set forth below.

BUSINESS ASSOCIATE

COVERED ENTITY

VALANT MEDICAL SOLUTIONS, INC.

CUSTOMER: Mt. Diablo Unified

By:

By:

Name:

Name:

Title:

Title:

Date:

Date: