

## MASTER CONSULTING SERVICES AND SUBSCRIPTION AGREEMENT

This Master Consulting Services and Subscription Agreement ("**Agreement**") is entered into as of December 9, 2020 (the "**Effective Date**") by and between the California Hospital Quality Institute, whose address is 1215 K Street, Suite 800, Sacramento, CA 95814 ("**HQI**") and SpeedTrack, Inc. whose address is 18340 Yorba Linda Blvd., Suite 107-194, Yorba Linda, CA 92886 ("**SpeedTrack**") (HQI and SpeedTrack are each a "**Party**" and collectively the "**Parties**").

WHEREAS, HQI is an organization that directs strategy and vision for advancing and improving patient safety and health care quality and reliability improvement activities for hospitals in the State of California;

WHEREAS, SpeedTrack provides data management, analytics and performance reporting platform technologies; and

WHEREAS, HQI desires to retain SpeedTrack to provide a single integrated data analytics platform to handle their data collection, integration, analysis and reporting needs. SpeedTrack

**NOW, THEREFORE**, SpeedTrack and HQI hereby agree as follows:

### 1. DEFINITIONS

- 1.1. "**Agreement**" means this Master Services and Subscription Agreement as the same may be amended in writing as set forth hereinafter from time to time.
- 1.2. "**Business Associate Agreement**" or "**BAA**" means a HIPPA compliant contract relating to the protection of PHI to be entered into between (i) SpeedTrack and HQI or the Participating Hospitals, or (ii) if applicable, SpeedTrack and subcontractors of SpeedTrack, in such form as shall be agreed to between SpeedTrack and the other party(ies) thereto.
- 1.3. "**Data**" means (a) any information provided to SpeedTrack by HQI or Participating Organizations for use with the Software, including PHI, electronic medical record data, accounting or financial data and/or other information regarding HQI, Participating Organizations, patients, facilities or On-Line Users; (b) other health care or related data obtained by SpeedTrack from HQI or from public and non-public sources as specified or contemplated by an SOW or as reasonably required in order for SpeedTrack to provide the Services. .
- 1.4. "**Effective Date**" has meaning ascribed to it in the first paragraph of this Agreement.
- 1.5. "**HQI Administrator**" means HQI's representative appointed to act as the main point of contact on HQI's behalf in connection with this Agreement.
- 1.6. "**HIPAA**" means The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Health Information Technology for Economic and Clinical Health Act, Public Law 111-05, and regulations promulgated or to be promulgated thereunder.
- 1.7. "**Initial Term**" shall mean the three (3) year term commencing on the Effective Date.

- 1.8. **"Malicious Software Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or other similar computer programs meant to cause malfunction, slow down or other functionality disruption to or in the Software.
- 1.9. **"Online Users"** means those individuals authorized to access and use the Software under this Agreement. Online users may include but are not limited to HQI and Participating Organizations, and their employees, consultants, contractors, and agents. HQI is responsible for authorizing Online Users' access to the Software.
- 1.10. **"Participating Organizations"** means California hospitals and their individual Online Users authorized by HQI to use and access Software in accordance with the terms of this Agreement.
- 1.11. **"PHI"** means any individually identifiable health information, as defined in 45 C.F.R. parts §160 and §164, as updated and amended from time to time
- 1.12. **"Services"** means consulting activities, projects and other services provided by SpeedTrack under a Statement of Work.
- 1.13. **"Software"** means the computer code programs, applications and platform provided by SpeedTrack for use by HQI and or its Participating Organizations.
- 1.14. **"SOW" or "Statement of Work"** means a written authorization or agreement between HQI and SpeedTrack regarding the Services to be performed by SpeedTrack, including, but not limited to, project management requirements, protocols, deliverables, training, and resource requirements; end user support; and payment terms. Each Statement of Work shall be signed by the Parties and attached to and become a part of this Agreement.
- 1.15. **"Term"** has the meaning ascribed to it in Section 13; provided, however, that if any open Statement of Work has a longer stated term, the term set forth in the Statement of Work shall govern with respect to the Services contemplated thereby.
- 1.16. **"Terms and Conditions of Use"** means the Terms and Conditions of Use for Online Users' use and access of the Software as determined by SpeedTrack and set forth in each respective Statement of Work, as they may be updated by SpeedTrack from time to time. !
- 1.17. **"Third-Party Applications"** means online, Web-based applications and offline software products that are provided by third parties that may interoperate with the Software, including third party data collection products and services used to provide Data to HQI and or SpeedTrack for inclusion in the Software.

## 2. SPEEDTRACK SERVICES

- 2.1. **Individual Projects.** HQI hereby retains SpeedTrack to provide such Services as may be designated in one or more Statements of Work entered into between SpeedTrack and HQI from time to time. The initial SOW is attached as **Exhibit A**. This Agreement and the Statement(s) of Work shall govern all Services provided by SpeedTrack from time to time, provided, that in the event of a conflict between this Agreement and the Statement(s) of Work, the Statement(s) of

Work shall control.

- 2.2. **Adherence to Agreement and Statement of Work.** SpeedTrack will perform Services using reasonable care, in accordance with industry standards and a high standard of professional conduct in doing so, and comply with this Agreement and any applicable Statement of Work. To the extent applicable and provided to SpeedTrack in writing prior to commencement of the applicable Services, SpeedTrack will comply with reasonable HQI and Participating Organization policies and procedures applicable to third party contractors, including but not limited to executing customary confidentiality and/or security forms/statements.
- 2.3. **Subcontractors.** SpeedTrack may utilize consultants and third party contractors in connection with the performance of Services under a Statement of Work subject at all times to the terms and conditions of this Agreement. Similarly, SpeedTrack may license or contract with Third Party Application providers to provide certain aspects of the Software or Services (and, in such circumstances, SpeedTrack may require that HQI or the Participating Organization enter into license or sublicenses with respect to such Third Party Applications). All such consultants and contractors shall agree to be bound by confidentiality and use restrictions consistent with those in this Agreement and shall, to the extent required by applicable law, enter into a Business Associate Agreement with SpeedTrack.
- 2.4. **Changes to Services.** All changes to the Services to be performed under a Statement of Work shall be memorialized in a written agreement between SpeedTrack and HQI that has been signed by both Parties. If HQI desires to change any terms of a Statement of Work, SpeedTrack and HQI will negotiate in good faith the terms under which SpeedTrack shall continue to provide Services (including a revised Statement of Work or schedule to the extent applicable), with any such changes memorialized in a writing signed by the Parties and made a part of this Agreement.
- 2.5. **Compliance.** SpeedTrack will conduct Services in compliance with all applicable federal, state, and local laws, regulations, and ordinances.

### 3. SOFTWARE SUBSCRIPTION.

- 3.1. **Subscription.** HQI, for itself and for use by its Participating Organizations, subscribes to the Software identified on the Statement of Work. All subscriptions to the Software shall be for the specific subscription Term provided on the Statement of Work and shall be subject to any applicable fees set forth in the Statement of Work.
- 3.2. **Business Associate Agreement.** All Participating Organizations provided use and access to the Software shall be identified by HQI to SpeedTrack prior to being provided access. SpeedTrack shall enter into a Business Associate Agreement with HQI in connection with this Agreement. In addition, at the request of HQI, SpeedTrack will enter into a Business Associate Agreement with individual Participating Organizations providing Data for use with the Software.
- 3.3. **Data.** Except as specifically provided in the Statement of Work, SpeedTrack shall have no responsibility for any Third Party Applications or third party vendor costs associated with collecting and transferring Data to SpeedTrack for use with the Software. Except as provided in a Statement of Work, HQI and/or Participating Organizations shall be responsible for all Third Party Applications and all third party vendor costs associated with collecting and

transferring Data to SpeedTrack for use with the Software and for obtaining requisite permission(s) to include and make Data available for use with the Software pursuant to this Agreement. All Data will be transferred in a manner and format prescribed by SpeedTrack and any third party vendor retained by HQI for such purposes shall be subject to the reasonable approval of SpeedTrack to the extent access to the Software or other SpeedTrack systems is required in connection with such transfer.

- 3.4. **Limited License.** Subject to the terms and conditions of this Agreement, SpeedTrack hereby grants to HQI and each Participating Organization during the applicable subscription Term set forth in the applicable Statement of Work, a non-exclusive, non-transferable, non-assignable, license to access and use of the SpeedTrack licensed Software (including any third party software sublicensed by SpeedTrack (or by HQI and/or each Participating Organization at the direction of SpeedTrack) and provided as part of the Software or Services ) for their lawful internal business purposes (the "**Permitted Use**") subject to the condition that access to the Software be granted to Online Users only, in each case for internal purposes of each of them and not for general public access or for use other than the Permitted Use. Permitted Use includes the right to use and publish Data as compiled, synthesized, analyzed, aggregated, and otherwise manipulated by the Software for educational, medical, scientific, and medical-economic purposes. SpeedTrack will not be liable for the actions of Online Users of HQI and Participating Organizations, including the unauthorized access or use of the Software through user identifications and passwords supplied by HQI and Participating Organizations, any unauthorized use or disclosure of the Data, or any violation of this Agreement by any person other than SpeedTrack or its consultants or third- party contractors.
- 3.5. **Passwords.** Unless otherwise provided in the Statement of Work, HQI Administrator will set up individual usernames and passwords for each Online User of HQI and Participating Organizations. No shared or pooled accounts or passwords will be set up or used. HQI shall, and shall use reasonable efforts to encourage its Participating Organizations to, maintain the confidentiality of all passwords and to limit the sharing of passwords, account numbers or information to Online Users and other authorized persons.
- 3.6. **Online Users.** Online Users do not have subscription rights or durations separate from those of HQI. Registration of Online Users by the designated HQI Administrator is an administrative act only, but is required to personally identify individuals using the Services and to control access and manage roles and responsibilities. Registered Online User accounts cannot be shared or used by more than one Online User. As a condition of use of the Software, each Online User or their Participating Organizations shall be required to accept and agree to the SpeedTrack Terms and Conditions of Use (which acceptance and agreement may be done electronically).

#### 4. SCOPE AND USE OF INTELLECTUAL PROPERTY

4.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder and the rights of any third parties with respect to Third-Party Applications provided by or through SpeedTrack, SpeedTrack reserves all rights, title, and interest in and to the Software and the Services, including all related intellectual property rights. No ownership rights in or to the Software or the Services are granted to HQI hereunder other than as expressly set forth herein.

- 4.2. **Restrictions.** HQI shall not (i) permit any third party to access the Software except as expressly permitted herein, (ii) create derivate works based on the Software or Services, or

(iii) reverse engineer the Software or Services, for any purposes. In addition, HQI shall not access or disclose the Software (or permit any third party to access the Software) in order to (a) build a competitive product or service or assist in any way a competitor of SpeedTrack, or (b) copy any features, functions or graphics of the Software or Services for competitive purposes.

- 4.3. **Ownership of Data.** SpeedTrack has no rights, title, or interest in or to any or all Data provided by HQI and/or its Participating Organizations for use with the Software or Services. As between SpeedTrack and HQI, HQI or its Participating Organizations exclusively own all rights, title, and interest in and to all Data provided by HQI and/or its Participating Organizations for use with the Software or Services.
- 4.4. **Downloaded Code.** Any software code, cookies or syntactically structured data, such as Hyper Text Markup Language (HTML), Extensible Markup Language (XML), JavaScript or other similar code that executes in the Online User's browser or are stored on and retrieved from the Online User's computer are the proprietary intellectual property of SpeedTrack. HQI is hereby granted a restricted license to use such property only in conjunction with the Software.
- 4.5. **Exportable and Printable Works.** The exportable and printable reports, graphs, and charts (collectively, the "**Exportable Data Forms**") created by use of the Services or Software are the intellectual property of SpeedTrack, provided, that SpeedTrack has no right to use, copy, publish, publicly perform or publicly display any Exportable Data Forms containing or incorporating Data, except as required to perform its obligations under this Agreement or as expressly granted under other provisions of this Agreement.
- 4.6. **Suggestions.** SpeedTrack shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual, non-exclusive license to use or incorporate into the Services or the Software any suggestions, enhancement requests, help files, recommendations or other feedback provided by HQI, including Online Users, relating to use and operation of the Software.

## 5. USE OF THE SOFTWARE AND SERVICES

**5.1. SpeedTrack Responsibilities.** SpeedTrack shall: (i) provide to HQI support as provided in the Statement of Work, (ii) use commercially reasonable efforts to make the Software available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which SpeedTrack will use commercially reasonable efforts to notify HQI of scheduled downtime of the Software at least 8 hours in advance), which SpeedTrack shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Eastern time Friday to 3:00 a.m. Eastern time Monday), or (b) any unavailability caused by circumstances beyond SpeedTrack reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, denial of service, ransomware, malware or similar attacks, or Internet service provider failures or delays, and (iii) provide the Software and Services only in accordance with applicable laws and government regulations. Nothing in this Agreement shall be construed to directly or indirectly create any liability whatsoever for SpeedTrack, including refund or fees for the Services, related to (1) operating errors made by Online Users, whether or not related to any training deficiencies, (2) failures of the computers of HQI or HQI's Online Users, (3) failures, outages or inaccessibility of HQI's internal

networking infrastructures, (4) failures, outages or inaccessibility of HQI's Internet access provider or intermediate transit provider to SpeedTrack' data center, (5) failures caused by circumstances and events beyond SpeedTrack' reasonable control, (6) failures caused by HQI's use of the Software or Services in connection with Third Party Applications not identified as compatible by SpeedTrack, except to the extent the possibility or effect of any of the foregoing occurring were not adequately addressed by the Data Security Standards (as defined in Section 8.3).

- 5.2. **HQI Responsibilities.** HQI shall designate a HQI Administrator who will be the principal point of contact for HQI under this Agreement and who will take principal responsibility for HQI of maintaining the administrative data used to operate the Software for the benefit of HQI and Participating Organizations. HQI shall (i) use best efforts to encourage Participating Organization and Online Users' compliance with this Agreement and aid and support of SpeedTrack in the removal of access privileges for any Online User who violates the terms of this Agreement (ii) be solely responsible for the accuracy, quality, integrity and legality of Data and of the means by which HQI or Participating Organizations acquired Data and submitted the Data to SpeedTrack for use with the Software, (iii) use commercially reasonable efforts to prevent unauthorized disclosure of SpeedTrack' Confidential Information, or access to or use of the Software, and notify SpeedTrack promptly of any such unauthorized disclosure, access or use that becomes known to HQI, and (iv) use the Software only in accordance with the Agreement, and applicable laws and government regulations.
- 5.3. **HQI Covenants.** HQI shall not (a) make the Software (~~or any Third Party Applications licensed to HQI in connection with the Services~~) available to anyone other than HQI or its Participating Organizations' Online Users, (b) authorize any person or business entity to be an Online User who is a known competitor of SpeedTrack, (c) sell, resell, rent, license or lease the Software or access to the Software other than to the Participating Organizations and their Online Users, (d) operate as a service bureau or intermediate provider of the Software to any third party without the advanced written consent of SpeedTrack, (e) use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (f) use the Software to store or transmit Malicious Software Code, (g) interfere with or disrupt the integrity or performance of the Software, (h) attempt to gain unauthorized access to the Software or related systems or networks, other than those areas specifically authorized for HQI and Participating Organization access, (i) access the Software for competitive purposes, or (j) remove or destroy any proprietary marks or legends including, but not limited to, trademarks and copyright notices placed upon or contained within the Software by SpeedTrack.

## 6. THIRD-PARTY PROVIDERS

- 6.1. **Acquisition of Third-Party Products and Services.** SpeedTrack may require or recommend Third-Party Applications, including data collection services, for HQI or Participating Organization purchase and use. Any acquisition by HQI or Participating Organizations of third-party products or services, including but not limited to Third-Party Applications and implementation, data collection, customization and other consulting services, and any exchange of data between HQI and/or a Participating Organization and any third-party provider, is solely between HQI and/or the Participating Organization and the applicable third-party provider. SpeedTrack does not warrant or support third-party products or services, whether or not they are designated by SpeedTrack as compatible for use with the SpeedTrack Data Platform Software.
- 6.2. **Third-Party Applications and Data.** If HQI installs or enables Third-Party Applications

for use with Software, HQI acknowledge that SpeedTrack may allow providers of those Third-Party Applications to access Data as required for the interoperation of such Third-Party Applications with the Software. SpeedTrack shall not be responsible for any disclosure, modification or deletion of Data resulting from any such access by Third-Party Application providers.

## 7. FEES AND PAYMENT FOR SERVICES AND SOFTWARE

- 7.1. **Subscription Fees.** Except in the event of a reasonable and good faith dispute regarding the accuracy of the fees, costs, and expenses billed, HQI shall pay all fees, costs and expenses specified in a Statement of Work, without setoff, for all purchased Services and for use and access to the Software (collectively "**Fees**"). Except as otherwise specified herein or in a Statement of Work, (i) Fees are quoted and payable in United States dollars (ii) Fees are based on purchased Services and for use and access of the Software and not actual usage of the Software, (iii) payment obligations are non-cancelable and Fees paid are nonrefundable.
- 7.2. **Invoicing and Payment.** HQI shall pay all invoices for the Services and Software within thirty days of the invoice date or such other period as may be provided in an SOW. any time period for processing of invoices will not alter the due date or SpeedTrack handling of delinquent accounts.
- 7.3. **Special Non-recurring Services.** SpeedTrack may offer services to HQI and Participating Organizations that are separate from the Services or Software provided under the terms of this Agreement, such as additional implementation assistance, data extraction, or operational or clinical consultation. Any such services are subject to separate pricing, terms and conditions and will be the subject of one or more separate agreements, with no ties to the terms of this Agreement unless provided for in a Statement of Work.
- 7.4. **Overdue Charges.** If any Fees are not received from HQI by the due date, then at SpeedTrack' discretion, (a) such charges may accrue late interest at the rate of 1% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) SpeedTrack may condition future subscription renewals and new orders on payment terms shorter than those specified in Section 7.2 (Invoicing and Payment).
- 7.5. **Suspension of Service and Acceleration.** If any undisputed amount owing by HQI under this Agreement for Services or Software is 30 or more days overdue, SpeedTrack may, upon ten days' written notice to HQI, but without limiting other rights and remedies, suspend SpeedTrack Services or use or access to the Software until such amounts are paid in full. If SpeedTrack takes such action at that juncture, subject to any termination rights that SpeedTrack may have, all Data and configuration information will remain intact and only the access to it by HQI, Participating Organizations and Online Users will be suspended.
- 7.6. **Takedown of Data and Account.** If any undisputed amount owing by HQI under this Agreement for SpeedTrack Services or Software is 120 or more days overdue, SpeedTrack may, without limiting its other rights and remedies take down, or disable HQI's access to HQI's account, including all configuration information and data from SpeedTrack servers. Resetting and reconfiguring the account and application instance to recover operation of the Software and use after all outstanding fee balances are paid may be subject to a service charge. Subject to applicable law, SpeedTrack reserves the right to

remove and delete all Data following termination of this Agreement, as set forth in Section 13.5 of this Agreement.

7.7. **Payment Disputes.** SpeedTrack shall not exercise its rights under Section 7.4 (Overdue Charges), 7.5 (Suspension of Service and Acceleration), or 7.6 (Takedown of Data and Account) if the applicable charges are under reasonable and good-faith dispute and HQI is attempting to cooperate diligently to resolve the dispute.

7.8. **Taxes.** Unless otherwise stated, SpeedTrack's fees and charges hereunder are exclusive of taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). HQI is responsible for paying all Taxes associated with HQI purchases hereunder. If SpeedTrack has the legal obligation to pay or collect Taxes for which HQI is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by HQI, unless HQI provides SpeedTrack with a valid tax exemption certificate authorized by the appropriate taxing authority. Notwithstanding the foregoing, SpeedTrack is solely responsible for taxes assessable against it based on SpeedTrack' income, property and employees.

## 8. CONFIDENTIALITY

8.1. **Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally, electronically or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. HQI Confidential Information shall include the Data; SpeedTrack Confidential Information shall include the Software and pricing under this Agreement; and Confidential information of each party shall include business and marketing plans, technology, know-how, proprietary information and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party by the Receiving Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party by the Receiving Party, as evidenced by documentation in Receiving Party's files prior to the date of such initial disclosure, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party by the Receiving Party, or (iv) was independently developed by the Receiving Party.

(a) **Protection of Confidential Information.** Except as otherwise permitted by this Agreement or otherwise in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have either signed a confidentiality agreement with the Receiving Party containing protections no less stringent than those herein, or (b) are under another obligation of confidentiality with Receiving Party at least as stringent as the one contained in this Agreement.

8.2. **Protection of Data.** Without limiting the above and in addition to the requirements under Section 11, SpeedTrack shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of the Data.



Except as contemplated by this Agreement or as otherwise permitted in writing by HQI, SpeedTrack shall use commercially reasonable efforts not to (a) modify the Data, (b) disclose the Data except as compelled by law in accordance with Section 8.4 (Compelled Disclosure), or (c) access Data except to provide the Services or Software or prevent or address service or technical problems, at HQI's request in connection with customer support matters, or for internal statistical purposes. SpeedTrack's efforts for the protection and security of Data shall require SpeedTrack to implement industry best practices with regard to data security, including, but not limited to: (x) data systems being located within a HIPAA compliant, SAS 70 certified site with restricted physical access, and (y) all PHI and other sensitive data being transmitted and stored in encrypted format, utilizing DES encryption algorithms, with limited access to encryption keys, and access to all data being arbitrated at both the database and application level, requiring passwords for all logins, with an enforced password security policy (the "**Data Security Standards**").

**8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

## 9. WARRANTIES AND DISCLAIMERS

### 9.1. SpeedTrack Warranties.

- (a) SpeedTrack warrants that the Services shall be provided and performed (i) in accordance with the highest professional standards and quality; (ii) in accordance with all applicable laws, rules and regulations; (iii) in a manner that will not infringe, misappropriate or violate the intellectual property rights of any third party; and (iv) in accordance with the Data Security Standards.
- (b) SpeedTrack warrants that the Software (i) for a period of twelve (12) months following the Effective Date, will materially perform in accordance with published specifications, descriptions, and other documentation, excluding those with clear indication of conditional or future modifications, and (ii) subject to the limitations and exclusions of Section 5.1 (SpeedTrack Responsibilities), SpeedTrack will not take any actions which could reasonably be expected to decrease the functionality of the Software during the Term; (iii) SpeedTrack is the owner of the Software and the intellectual property embodied within and used by the Software or has sufficient rights to offer, use and license such Software and intellectual property rights to HQI (except in circumstances where HQI directly licenses a Third Party Application); and (iv) the Software does not infringe, misappropriate, or violate the intellectual property rights of any third party (provided that SpeedTrack makes no such representation as to any Third Party Application. Such Software warranty shall include coverage of any new releases or enhancements included as part of the Software and deployed by SpeedTrack in connection with the Services.
- (c) For any breach of either of the foregoing warranties, HQI's exclusive remedies shall be (enforcement of its rights as provided in Section 10.1 (Indemnification by SpeedTrack) and Section 10.2 (Data Security Breach) for third party claims;

enforcement of its rights as provided for in Section 11(Security And Confidentiality Of Protected Health Information); and as provided in Section 13.3 (Termination for Cause) and Section 13.4 (Refund or Payment upon Termination), below.

9.2. **Mutual Warranties.** Each party represents and warrants that (i) it has the legal power and authority to enter into this Agreement, (ii) by entering into this Agreement, such party will not be in default or violation of any agreement, contract, mortgage, judicial order or other governmentally imposed restriction, and (iii) it will not transmit to the other party any Malicious Software Code.

9.3. **Disclaimer.** HQI ACKNOWLEDGES AND AGREES, ON ITS OWN BEHALF AND ON BEHALF OF ITS PARTICIPATING ORGANIZATIONS AND ONLINE USERS, THAT OTHER THAN AS EXPRESSLY PROVIDED IN THIS SECTION 9 AND OTHERWISE IN THIS AGREEMENT, THE SOFTWARE AND SERVICES ARE BEING MADE AVAILABLE TO HQI AND ITS ONLINE USERS ON AN "AS IS" BASIS. THE PARTIES HAVE NEGOTIATED TIDS AGREEMENT WITH DUE REGARD FOR THE PARTIES' BUSINESS RISK ASSOCIATED WITH USE OF THE SERVICES AND SOFTWARE. THE WARRANTIES IN THIS SECTION 9 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR TITLE OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. OTHER THAN AS OTHERWISE PROVIDED IN TIDS AGREEMENT, SPEEDTRACK DOES NOT WARRANT THAT THE SOFTWARE WILL PERFORM UNINTERRUPTED OR ERROR FREE OR THAT THE SERVICES OR SOFTWARE WILL MEET HQI'S OR ANY STRATEGIC PARTNER OR ONLINE USER'S REQUIREMENTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SPEEDTRACK, ITS AGENTS OR EMPLOYEES SHALL IN ANY WAY INCREASE THE SCOPE OF ITS WARRANTY.

## 10. MUTUAL INDEMNIFICATION

10.1. **Indemnification by SpeedTrack.** SpeedTrack shall defend, indemnify, and hold harmless HQI and its Participating Organizations and each of their members, employees, officers, directors, agents and representatives (each a "**HQI indemnified party**"), against any claim, demand, suit, or proceeding ("**Claim**") made or brought against a HQI indemnified party by a third party (i) alleging that the use of the Services or Software as permitted hereunder infringes or misappropriates the intellectual property rights of a third party or (ii) arising from the gross negligence or intentional misconduct of SpeedTrack, and shall indemnify and pay such HQI indemnified party for any damages finally awarded against, and for reasonable attorney' s fees incurred by, such HQI indemnified party in connection with any such Claim; provided, that the HQI indemnified party (a) promptly gives SpeedTrack written notice of the Claim; (b) gives SpeedTrack, at its option, sole control of the defense and settlement of the Claim (provided that SpeedTrack may not settle any Claim unless the settlement unconditionally releases a HQI indemnified party of all liability); (c) provides to SpeedTrack all reasonable assistance, at SpeedTrack expense, in defending the Claim, and (d) as of the time of such indemnifiable event, SpeedTrack has not given written notice that HQI is in material breach of this Agreement, with such breach being uncured at the time of the indemnifiable event. SpeedTrack's obligation to indemnify is not suspended or

waived by but is reduced to the extent it is prejudiced or damaged (including loss of or restriction on insurance coverage otherwise available) by a HQI indemnified party's failure to do any of the foregoing in clauses (a) through (d), inclusive. In the event of an infringement claim, and as a condition of indemnification, SpeedTrack shall have the right to: (i) replace the infringing Software giving rise to such claim with functionally equivalent software; (ii) modify the Software while retaining substantively equivalent functionality; (iii) procure at no cost to HQI the right to continue to use the Software components; or (iv) if the foregoing is not commercially reasonable, terminate this Agreement. If SpeedTrack terminates pursuant to this Section, HQI shall be entitled to receive a pro rata refund of any subscription fees that were prepaid for the Software based on remaining time left in the then-current Subscription Term.

**10.2. Data Security Breach.** Subject to the provisions of Section 10.4, SpeedTrack shall defend, indemnify, and hold harmless the HQI indemnified parties against any Claim made or brought against a HQI indemnified party by a third party, including but not, limited to a governmental agency, arising from any breach of: (i) SpeedTrack's warranty under Section 9.1 that the Services and Software will perform in accordance with the Data Security Standards or (ii) SpeedTrack' obligations under Section 11, and shall indemnify and pay such HQI indemnified party for any damages finally awarded against, and for reasonable attorney' s fees incurred by, such HQI indemnified party in connection with any such Claim finally determined by a court of competent jurisdiction; provided, that such HQI indemnified party (a) promptly give SpeedTrack written notice of the Claim; (b) give SpeedTrack, at its option, sole control of the defense and settlement of the Claim (provided that SpeedTrack may not settle any Claim unless the settlement unconditionally releases a HQI indemnified party of all liability); (c) provide to SpeedTrack all reasonable assistance, at SpeedTrack expense, in defending the Claim, and (d) as of the time of such indemnifiable event, SpeedTrack has not given written notice that HQI is in material breach of this Agreement, with such breach being uncured at the time of the indemnified event. SpeedTrack's obligation to indemnify under this Section 10.2 is not suspended or waived by but is reduced to the extent it is prejudiced or damaged (including loss of or restriction on insurance coverage otherwise available) by a HQI indemnified party's failure to do any of the foregoing in clauses (a) through (d), inclusive.

**10.3. Indemnification by HQI.** HQI shall defend SpeedTrack, including any of its employees, officers, directors, agents and representatives (each an "**SpeedTrack indemnified party**"), against any Claim made or brought against a SpeedTrack indemnified party by a third party alleging that Data or HQI's use of the Software or Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party, violates applicable law or in any way has damaged such third party and shall indemnify such SpeedTrack indemnified party for any damages finally awarded against, and for reasonable attorney's fees incurred by such SpeedTrack indemnified party in connection with any such Claim; provided, that the SpeedTrack indemnified party (a) promptly gives HQI written notice of the Claim; (b) gives HQI sole control of the defense and settlement of the Claim (provided that HQI may not settle any Claim unless the settlement unconditionally releases SpeedTrack of all liability); and (c) provides to HQI all reasonable assistance, at HQI's expense. HQI's obligation to indemnify under this Section 10.3 is not suspended or waived by but is reduced to the extent it is prejudiced or damaged (including loss of or restriction on

insurance coverage otherwise available) by an SpeedTrack indemnified party's failure to do any of the foregoing in clauses (a) through (c), inclusive.

#### **10.4. Limitations on Certain Indemnification.**

10.4.1 SpeedTrack agrees to acquire and maintain a policy of commercial liability insurance with The Hartford, Hartford Financial Services Group or an affiliated entity or from an insurance carrier with an A.M. Best Rating of A- or better with coverage limits of at least \$5,000,000 per occurrence and a \$5,000,000 annual aggregate limit that insures SpeedTrack's defense and indemnification obligations to the HQI indemnified parties under Section 10.2 (the "**Required Insurance Policy**"). SpeedTrack shall provide HQI with a certificate of insurance evidencing that the Required Insurance Policy is in effect upon request by HQI.

10.4.2 Provided SpeedTrack has the Required Insurance Policy in force with respect to any Claim, SpeedTrack's liability under Section 10.2 shall be limited to the insurance defense and indemnity coverage provided by the Required Insurance Policy

10.5. **Exclusive Remedy.** This Section 10 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

### **11. SECURITY AND CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION**

11.1. If SpeedTrack receives any PHI from HQI or the Participating Organizations, creates or receives any PHI on behalf of HQI or the Participating Organizations, or otherwise has access to any PHI in the possession of HQI or the Participating Organizations, then SpeedTrack shall maintain the security and confidentiality of such PHI in the manner as required of a covered entity under HIPAA. In addition, SpeedTrack hereby agrees to comply with the terms of any Business Associate Agreement entered into in connection with this Agreement, provided, that SpeedTrack liability under any such Business Associate Agreement shall not exceed the limitations on damages and liability in this Agreement.

11.1.1 **Permitted Uses and Disclosures of PHI.** SpeedTrack acknowledges that any use or disclosure of PHI by SpeedTrack not expressly permitted under this Agreement is prohibited.

11.1.2. **Responsibilities with Respect to PHI.** SpeedTrack agrees to take commercially reasonable steps to provide the necessary training and education to members of SpeedTrack's workforce with respect to SpeedTrack' obligations under this Section and the Business Associate Agreement. SpeedTrack shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in contravention of this Agreement. With respect to any use or disclosure of PHI permitted under this Agreement, SpeedTrack agrees to disclose to its subcontractors, agents or other third parties only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

11.1.3. **Safeguards.** SpeedTrack shall use appropriate commercially reasonable safeguards to prevent use or disclosure of PHI in any manner other than as specifically permitted by this Agreement. SpeedTrack shall provide HQI with such information concerning such safeguards as HQI may from time to time request, and shall, upon reasonable request and no more frequently than once per any twelve (12) month period, give HQI: (i) access to SpeedTrack's facilities used for the maintenance or processing of PHI; and (ii) access to and

the ability to copy its books, records, practices, policies and procedures concerning the use and disclosure of PHI, for the sole purpose of determining SpeedTrack' compliance with this Agreement with respect to use and disclosure of PHI.

## 12. LIMITATION OF LIABILITY

12.1. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID (OR, IN THE CASE OF HQI'S LIABILITY, REQUIRED TO BE PAID) BY HQI HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT HQI PAYMENT OBLIGATIONS UNDER SECTION 7 (FEES AND PAYMENT FOR SERVICES AND SOFTWARE). THE FOREGOING DOES NOT APPLY TO EITHER PARTY'S BREACH OF ITS RESPECTIVE INDEMNIFICATION OBLIGATIONS TO THE OTHER SET FORTH IN SECTION 10, OR TO SPEEDTRACK'S BREACH OF ITS OBLIGATIONS UNDER SECTION 11, PROVIDED, THAT SPEEDTRACK'S LIABILITY FOR DATA SECURITY BREACHES (INCLUDING THOSE UNDER SECTION 11 AND INDEMNITY OBLIGATIONS UNDER SECTION 10.2) SHALL BE LIMITED AS PROVIDED IN SECTION 10.4.

12.2. **Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR, AND THE OTHER PARTY HEREBY WAIVES ITS CLAIM FOR, ANY LOST PROFITS OR REVENUES, LOST DATA OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, INDEMNITY OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12.3. **Wavier of Certain Risk** HQI REPRESENTS AND WARRANTS THAT HQI KNOWS AND AGREES THAT NO ON-LINE SERVICE IS COMPLETELY SECURE AGAINST UNAUTHORIZED ACCESS, AND THAT, WHEN USING THE SOFTWARE AND SERVICE, IT WILL BE TRANSMITTING DATA OVER PUBLIC NETWORKS THAT ARE INHERENTLY INSECURE. PROVIDED SPEEDTRACK EMPLOYS THE DATA SECURITY STANDARDS AND OTHERWISE TAKES COMMERCIALY AND TECHNICALLY REASONABLE PRECAUTIONS TO PREVENT UNAUTHORIZED ACCESS, HQI ASSUMES ALL RISK ASSOCIATED WITH UNAUTHORIZED INTERCEPTION, USE AND ACCESS TO DATA SENT BY AND TO HQI WHEN USING THE SERVICES OR SOFTWARE. SPEEDTRACK IS NOT AND WILL NOT BE RESPONSIBLE FOR DISRUPTION OF SERVICES OR LOSS OF DATA, OR ANY OTHER DAMAGE, LOSS OR LIABILITY RESULTING FROM THE SERVICES OR SOFTWARE.

## 13. TERM AND TERMINATION

13.1. **Term of Agreement.** The term of this Agreement will commence through and until the last day of the Initial Term, unless earlier terminated in accordance with this Agreement. Upon expiration of the Initial Term, this Agreement will automatically extend for additional one (1) year terms (each an "Additional Term" and together with the Initial Term, the "Term") unless either party gives written notice to the other of its intention not to renew at

least six (6) months prior to the expiration of the then current Term. This notice requirement shall not apply to Termination for Cause as described in section 13.3.

**13.2. Termination for Cause.** A party may terminate this Agreement (i) in the event of the other party's breach of this Agreement which remains uncured for more than 30 days following written notice delivered to the breaching party by the non-breaching party specifying the nature of the breach, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. In addition, SpeedTrack may terminate this Agreement immediately in the event that HQI brings any action against SpeedTrack for infringement of any intellectual property owned or controlled by HQI, used in connection with the Software.

**13.3. Refund or Payment upon Termination.** Upon any termination of this Agreement by HQI pursuant to Section 13.2(i) above as a result of SpeedTrack's uncured breach, SpeedTrack shall refund HQI any prepaid but unused Fees as of the effective date of termination. Upon any termination pursuant to Section 13.2(i) above by SpeedTrack as a result of HQI's uncured breach, HQI shall pay any unpaid Fees owed to SpeedTrack as of the date of termination plus an amount equal to the total Fees paid by HQI during the six (6) months prior to such termination. In no event shall any termination relieve HQI of the obligation to pay any Fees payable to SpeedTrack for the period prior to the effective date of termination or for services or software delivered under separate agreements.

**13.4. Return of Data During Term and Upon Termination.** Upon request by HQI made during the Term until sixty (60) days after the effective date of termination of the Term, SpeedTrack will make available to HQI for download a file of Data and shall use its reasonable commercial efforts, at its own cost, to cooperate with HQI to provide the downloaded Data in a reasonable format which is useful and readable through readily available Third Party Software, such as in a CSV or other common database format. HQI shall pay SpeedTrack its reasonable costs incurred in providing any Data in response to a request made at least 90 days prior to the expiration of the Term. SpeedTrack shall honor any HQI request for Data within a reasonable period of time, not to exceed sixty (60) days after HQI's request. After the 60-day period following the effective date of termination of the Term, SpeedTrack shall have no obligation to maintain or provide any of Data and shall thereafter, unless legally prohibited, use commercially reasonable steps to delete Data in SpeedTrack systems or otherwise in SpeedTrack' possession or control. SpeedTrack shall not be responsible for, or obligated to HQI for, extraction and delivery of data in any other format, or any other data handling service, and such requests by HQI will be considered by SpeedTrack without obligation on a fee-paid basis.

**13.5. Surviving Provisions.** Sections 4 (Scope and Use of Intellectual Property), Section 7.8, Section 8 (Confidentiality), Section 9.3 (Disclaimer), Section 10 (Mutual Indemnification), Section 11 (Security and Confidentiality of Protected Health Information), Section 12 (Limitation of Liability), Section 13.3 (Refund or Payment upon Termination), Section 13.5 (Return of Data), Section 14 (Notices and Application of Law) and Section 15 (General Provisions) shall survive any termination or expiration of this Agreement.

## **14. NOTICES AND APPLICATION OF LAW**

**14.1. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals required or permitted hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the third business day after

mailing by first class mail, postage prepaid, (iii) the third business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). All Notices must be delivered to the address of the respective party listed on the first page of this Agreement, or at such other address as provided in writing by the party to which the notice is directed. Notices to HQI shall be addressed to the HQI Administrator or other person designated by HQI for HQI's relevant account, and in the case of billing-related notices, to the relevant billing contact designated by HQI. Notices delivered to the HQI Administrator will be deemed to have been received by HQI.

- 14.2. **Agreement to Governing Law, Venue and Jurisdiction.** Each party agrees to the applicable governing law to be that of the State of California without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts in Sacramento County or Orange County, California.
- 14.3. **Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

## 15. GENERAL PROVISIONS

- 15.1. **Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services and Software. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) HQI shall not permit Online Users to access or use Services in violation of any U.S. export embargo, prohibition, or restriction.
- 15.2. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither party may bind the other to any obligation without the express written authorization of the party to be bound.
- 15.3. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement other than the intended indemnified parties under Section 10 (Mutual Indemnification). The benefits and obligations of SpeedTrack to HQI contained in this Agreement are not enforceable by any Participating Organizations or Online Users.
- 15.4. **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 15.5. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 15.6. **Attorney Fees.** In the event either Party brings an action or arbitral proceeding against the other Party to enforce the terms of this Agreement, the necessary and reasonable attorneys' fees of the prevailing party shall be reimbursed by the non-prevailing party upon entry of a final dispositive order or award.

- 15.7. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, SpeedTrack may assign its rights and obligations in and to this Agreement in its entirety (including all Statements of Work), without consent of HQI, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of HQI. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 15.8. **Entire Agreement.** This Agreement, including and all exhibits and addenda hereto and all Statements of Work, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Statement of Work, the terms of such exhibit, addendum or Statement of Work shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in HQI purchase order or other order documentation (excluding Statements of Work) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- 15.9. **Counterparts/Facsimile.** This Agreement may be executed in several counterparts and by facsimile, each of which shall be deemed an original and all of which taken together shall constitute one single agreement between the parties.

On behalf of:



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Robert Imhoff, President  
Hospital Quality Institute

Date: 12/09/2020

DocuSigned by:



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Jeff Pratt, CEO, SpeedTrack, Inc.

Date 12/9/2020