

**IMPACT APPLICATIONS, INC.
SERVICES AGREEMENT
(School District)**

THIS FORM MUST BE RETURNED TO:

**BILLING@IMPACTTEST.COM or
FAX: 412-774-1562**

This SERVICES AGREEMENT (the "**Agreement**") is made and entered into as of this ____ day of _____, _____ (the "**Effective Date**") by and between IMPACT APPLICATIONS, INC., a Pennsylvania corporation, having its principal place of business at 9665 Granite Ridge Drive, Suite 550, San Diego, California 92123 ("**ImPACT Applications**"), and _____, having its principal place of business at _____ (the "**Customer**").

BACKGROUND

A. ImPACT Applications has the right to license or sell the Products (defined below) through ImPACT Applications' website and various third party distributors (the "**ImPACT Applications Site**").

B. Customer desires to obtain access to one or more of the ImPACT Applications Products on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the covenants, representations, and warranties contained herein, and intending to be legally bound hereby, ImPACT Applications and Customer agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the respective meanings assigned to them below:

"**Customer Materials**" means all materials and content, such as logos and Customer's standard operating procedures, if any, provided to ImPACT Applications by Customer for incorporation into the Product.

"**Customer Site**" means a web site owned or controlled by Customer through which Customer and End Users access the Product.

"**Configurations**" means standard set-up and activation services for the Product.

"**Documentation**" means user documentation for the Product available at ImPACT Applications' web site or sent to the Customer in print, as such documentation may be amended by ImPACT Applications from time to time.

"**End User**" means people other than Customer who are allowed by Customer or a Customer sublicensee to access the Product via the ImPACT Applications Site or a Customer Site.

"**ImPACT Applications Site**" means one or more web sites owned or controlled by ImPACT Applications or an affiliate of ImPACT Applications through which Customer or End Users may obtain access to the Product.

"**Normal Business Hours**" means 7:00 a.m. CST to 7:00 p.m., CST, Monday through Friday, but excluding all holidays observed by ImPACT Applications.

"**Person**" or "**person**" means any corporation, partnership, limited liability company, joint venture, other entity, or natural person.

"**Product**" means the ImPACT Applications products and services available from time-to-time on or through the ImPACT Applications Site, as such Products are described in greater detail in the Documentation, together with any Updates thereto.

"**Product Infrastructure**" means the hardware, software, and other equipment that ImPACT Applications uses in connection with its hosting of the Product for Customer hereunder.

"**Terms of Use**" means the terms and conditions of use for the Product including, but not limited to, ImPACT Applications' Privacy Policy and Terms of Use accessible at www.impacttest.com, which terms and conditions of use shall be accessible to users of the Product through a login or other access screen, as such terms and conditions of use are amended by ImPACT Applications from time to time.

"**Territory**" means the United States.

"**Update**" means any update, upgrade, or new release for the Product that ImPACT Applications may make available to Customer from time to time hereunder.

2. PRODUCT ACCESS; RESTRICTIONS; RESALE PROVISIONS; EXTENSION OF AGREEMENT TO SUBSEQUENT PRODUCTS; SUBLICENSES

2.1 Limited License. Subject to Customer's compliance with the terms and conditions of this Agreement, ImPACT Applications hereby grants to Customer, during the Term, a non-exclusive, non-transferable (except as expressly permitted hereunder), license: to access the Product, to use the Product in the Territory, and to authorize End Users to access and use the Product, via the ImPACT Applications Site or a Customer Site.

2.2 Sublicenses. Customer may grant sublicenses to any of its constituent schools, any scholastic sports team, or club that consists of End Users, or any other organization whose membership consists of End Users. Any sublicenses granted by

Customer under the terms of this Agreement shall be subject to the same terms and conditions set forth in this Agreement, and Customer shall obtain written assurances from each sublicensee that such sublicensee agrees to be bound by the terms and conditions set forth in this Agreement. No sublicensee shall be authorized to grant any further sublicenses. Customer shall notify ImPACT Applications of any sublicense granted by Customer relating to this Agreement within thirty (30) calendar days thereafter. ImPACT Applications reserves the right to terminate any sublicense upon cause shown and reasonable notice to Customer.

2.3 Terms of Use. All access to and use of the Product and Documentation shall be in accordance with the Terms of Use and the Conditions of Use. Prior to using or being provided access to the Product, each End User shall first have assented to the Terms of Use in some reasonable and verifiable manner as approved by ImPACT Applications. Customer shall not take any action that would mask, delete, or otherwise alter the Terms of Use or any other disclaimers or notices that ImPACT Applications may include in the Product from time to time. Customer agrees to (i) promptly notify ImPACT Applications should Customer become aware that any End User has violated or is violating the Terms of Use; and (ii) reasonably cooperate with ImPACT Applications in any actions that ImPACT Applications may elect to take with respect to any End User who violates the Terms of Use, including, without limitation, terminating such End User's access to the Product. Prior to using or being provided access to the Product, each End User shall have either assented to the Terms of Use or, if applicable, provided Customer the consent required under the Children's Online Privacy Protection Act of 1998, as amended ("COPPA"). Customer shall not take any action that would mask, delete, or otherwise alter the Terms of Use or any other disclaimers or notices that ImPACT Applications may include in the Product from time to time. Customer shall be and remain primarily liable for any breach of the Terms of Use or failure to secure the required COPPA consent from an End User prior to using the Product.

2.4 Configurations. ImPACT Applications shall prepare and incorporate Configurations in order to enable access to the Product. ImPACT Applications and its licensors own and shall continue to own all right, title, and interest in and to the Product and such Configurations after any Configurations are incorporated therein; provided however that Customer or its licensors shall own and continue to own all right, title, and interest in and to the Customer Materials. Customer hereby grants to ImPACT Applications a royalty-free license to prepare the Configurations and to incorporate said Configurations into the Product as permitted hereunder.

2.5 Proprietary Notices. Customer shall not remove any trademark, copyright, or patent notices, any proprietary or restricted rights notices, or any other proprietary notices or disclaimers that appear in the Product, or in any of the

Documentation. Unless otherwise agreed to in writing by ImPACT Applications, Customer shall state on its website, on all Products, and on or in all Promotional Materials and otherwise that: (i) the ImPACT Applications Marks are "licensed from ImPACT APPLICATIONS, INC."; (ii) the Products are "licensed from ImPACT APPLICATIONS, INC."; and (iii) the Products are subject to copyright, as the case may be.

2.6 Other License Restrictions. Customer shall not make any representations, warranties, conditions, or guarantees with regard to the Product that are inconsistent with or in addition to those made by ImPACT Applications to Customer hereunder. In addition, except as expressly authorized herein, Customer shall not authorize End User to: (i) copy or modify the Product for any purpose; (ii) reverse engineer, decompile, modify, translate, disassemble, or discover the source code for all or any portion of the Product; or (iii) distribute, disclose, market, rent, lease, or otherwise transfer the Product or Documentation to any other person, except as set forth in Section 2.1 hereto.

2.7 Reservation of Rights. Except for the licenses and rights expressly granted under this Agreement, no licenses or rights are granted by either party to the other party hereunder, by implication, estoppel, or otherwise. All such other licenses and rights are reserved unto ImPACT Applications or Customer, as applicable. ImPACT Applications expressly reserves the right, in its sole discretion and in the Territory and throughout the world, to: (i) sell or license the Product directly to any third party; (ii) use the ImPACT Applications Marks for the purpose of promoting, advertising, or marketing the Product; and (iii) grant promotional, advertising, and/or marketing rights to other persons.

2.8 Product Representations. Customer shall make no, and shall indemnify ImPACT Applications for and against any and all claims arising out of, representations or warranties concerning quality, performance, or other characteristics of the Products other than those which are consistent in all respects with, and do not expand the scope of, the representations and warranties made by ImPACT Applications for such Products. Customer may not write or otherwise create any additional Product Documentation or authorize the creation thereof without ImPACT Applications' express prior written consent. The only Product Documentation that Customer is authorized to sell or distribute is official ImPACT Applications Product Documentation that shall have been produced by ImPACT Applications. Customer agrees that its obligation to indemnify ImPACT Applications for and against any and all claims arising out of any warranty that is inconsistent with or additional to the warranties contained in this Agreement shall not be affected, reduced, or impaired by the fact that Customer is required by local mandatory law to provide such inconsistent or additional warranty.

2.9 Ownership of Customer Data. The ImPACT Applications system will aggregate and generate data relating to End Users that will relate to medical information such as age,

height, weight, prior injuries, and test results from using the Product and such other information as ImPACT Applications may determine from time-to-time would be useful in improving the performance of the Product (the "**Customer Data**"). Customer is the sole exclusive owner of the Customer Data. ImPACT Applications shall be permitted to use aggregated, de-identified Customer Data, for internal and external evaluation purposes provided that such information does not identify an individual and there is no reasonable basis to believe that the information can be used to identify an individual. Any use of Customer Data by ImPACT Applications shall comply with all applicable U.S. rules, laws, and regulations regarding data protection and privacy.

2.10 Government Approvals. Customer shall, at its expense, obtain all registrations, licenses, and permits required to perform its obligations, pay all taxes and fees due in connection therewith, and provide ImPACT Applications with such documentation as ImPACT Applications may request to confirm Customer's compliance with this Section 2.10 and agrees that it shall not engage in any course of conduct that, in ImPACT Applications' reasonable belief, would cause ImPACT Applications to be in violation of the laws of any jurisdiction.

2.11 Material Breach. Any breach of any of the provisions of this Section 2 by Customer shall be deemed a material breach of this Agreement.

2.12 Applicability of Agreement to All ImPACT Applications Products and Pricing Changes. Customer acknowledges ImPACT Applications may offer additional Products during the term of this Agreement (each a "**Subsequent Product**" and collectively, the "**Subsequent Products**"). Customer and ImPACT Applications acknowledge and agree Subsequent Products may be licensed by Customer, subject to all terms and conditions of this Agreement, without a formal written modification of this Agreement or the execution of a separate contract on the condition that Subsequent Products and pricing terms are described in a writing by ImPACT Applications and acknowledged by Customer. Such a writing and acknowledgement may include email exchanges, an online ordering system or portal, or any other means that is mutually acceptable by the parties without any need to reference this Agreement or any amendment thereto. Performance subsequent to any acknowledgement or writing as stated herein shall constitute acceptance. ImPACT Applications may also amend Schedule A consistent with the terms of this Agreement without a written modification of this Agreement, provided that any modifications to Schedule A are provided to Customer in a manner consistent with this section. Upon communication to customer of revisions to Schedule A, said revisions shall merge into and fully become part of this Agreement without need for a separate acceptance or novation.

3. PRODUCT INFRASTRUCTURE

3.1 Obligations of ImPACT Applications. Subject to

Customer's compliance with the terms and conditions of this Agreement, ImPACT Applications shall be responsible for providing and maintaining the Product Infrastructure. The Product Infrastructure is subject to modification by ImPACT Applications from time to time for purposes such as adding new functionality, maximizing operating efficiency, and upgrading hardware and software. Customer understands and acknowledges such modifications may require changes to Customer's Internet access and telecommunications infrastructure to maintain Customer's desired level of performance. ImPACT Applications will provide industry standard web hosting and connectivity and use reasonable efforts to provide Customer 99.99% up time operation; provided, however, Customer acknowledges and agrees that downtime may occur for systems maintenance, including without limitation diagnostics, upgrades, and operations reconfiguration and that unscheduled downtime may occur as a result of forces beyond the immediate control of ImPACT Applications including, but not limited to, hardware failures, electrical outages, or failures or outages caused by Customer's network or internet service provider.

3.2 Obligations of Customer; Internet Access and Telecommunications Services. Except for the Product Infrastructure, which will be provided by ImPACT Applications, Customer shall be responsible for obtaining and maintaining all hardware, software, equipment, and other items required in connection with Customer's access to and use of the Product as contemplated hereunder, including, without limitation, all hardware, software, equipment, and other items required to develop and maintain the Customer Site functionality necessary to facilitate access to the Product. Customer at its expense shall be responsible for obtaining Internet access and/or telecommunications services, or upgrading Customer's existing Internet access or telecommunications services, to allow access to the Product by Customer and End Users. ImPACT Applications shall not be responsible for interruptions in Customer's use of the Product caused by such providers or interruptions in the service provided by such providers.

4. TEST ACCESSIBILITY; SERVICE; REPORTS; USER'S GUIDE; UPDATES

4.1 Test Accessibility; Service. A description of how to access the Products, ImPACT Applications technical support, and report generation is set forth on Schedule A.

4.2 Updates. ImPACT Applications shall provide all Updates to Customer as they are released generally by ImPACT Applications to all of its customers. Any and all Updates offered by ImPACT Applications to its customers during the term shall be provided to Customer free of charge.

5. FEES AND PAYMENTS; TAXES; LATE PAYMENTS

5.1 Product Fees - License. In consideration of the license

rights and services provided by ImPACT Applications hereunder, Customer will pay ImPACT Applications the applicable Product Fees within thirty (30) calendar days of receipt of an invoice. Current fees for the Products are set forth on Schedule A (the "**Product Fees**"). Customer shall be responsible for collecting Product Fees from its sublicensees and shall remit the same to ImPACT Applications according to the terms set forth in this Section 5. ImPACT Applications shall electronically invoice Customer for all Product Fees due hereunder and it is Customer's sole responsibility to update ImPACT Applications regarding any changes in Customer's electronic contact information. All Product Fees due to ImPACT Applications shall be paid by Customer in full without right of set-off or deduction. In the event all amounts due to ImPACT Applications are not paid when due, ImPACT Applications shall have the right, in its sole and absolute discretion, to suspend Customer's access to the Product until payment is remitted, subject to ImPACT Applications' compliance with all applicable U.S. federal, state, and local rules, laws, and regulations regarding data protection, data retention, and data privacy of Customer Data, including but not limited to HIPAA (defined below). Failure to pay Product Fees as set forth above shall constitute a material breach of this Agreement and shall subject Customer to termination of this Agreement in accordance with Section 8 herein.

5.2 Product Fees. The Product Fees shall apply only to Products and not to any other goods or services ImPACT Applications may offer, including without limitation separate modules, professional services, or third party products offered by ImPACT Applications from time to time, all of which ImPACT Applications may, in its sole discretion, separately offer and price. ImPACT Applications may offer special promotions or discounts on Products from time to time and as a result, may amend pricing of the Products upon thirty (30) days prior written notice to Customer.

5.3 Fee Increases. ImPACT Applications may, upon sixty (60) days prior written notice to Customer, increase the Product Fees charged to Customer hereunder.

5.4 Taxes. To the extent applicable, Customer shall be responsible for paying all sales, use, value-added, and other similar taxes in connection with the Product and services provided hereunder, except for taxes assessed, levied, or imposed based upon ImPACT Applications' property or income. ImPACT Applications may elect to include said taxes, duties, and charges as separately itemized charges in its invoices to Customer hereunder.

5.5 Late Payments. In the event any amounts due to ImPACT Applications hereunder are not paid when due, ImPACT Applications shall have the right, in its sole and absolute discretion, to: (i) immediately terminate this Agreement by delivering written notice thereof to Customer; (ii) immediately suspend Customer's and any of its sublicensees' access to the

Product; and (iii) charge Customer interest on such late payment, which shall accrue interest from the first day following the due date until paid in full at the lesser of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law.

6. **WARRANTIES AND LIMITATIONS OF LIABILITY**

6.1 Warranty. ImPACT Applications warrants that Product will operate in substantial conformance with the Documentation. Customer must notify ImPACT Applications in writing, within ten (10) days following the date on which Customer is first given access to the Product, of any failure of Product to operate in substantial conformance with the Documentation. Customer must also notify ImPACT Applications in writing, within ten (10) days following the date of performance of any services by ImPACT Applications hereunder, of any failure by ImPACT Applications to perform said services in a professional manner and in accordance with the terms and conditions of this Agreement. ImPACT Applications' sole obligation and Customer's sole remedy with respect to any failure of the Product to substantially conform to the specifications therefor, or of any failure of ImPACT Applications to perform services hereunder in a professional manner and in accordance with the terms and conditions of this Agreement, is for ImPACT Applications to use commercially reasonable efforts to remedy any such failure as soon as is reasonably practicable, and if such failure is not remedied in a reasonable time, for Customer to terminate this Agreement upon written notice to ImPACT Applications. ImPACT Applications represents and warrants that it is not a Sanctioned Person or Entity. For purposes of this Agreement, the term "Sanctioned Person or Entity" means a person or entity that has been excluded by the Office of the Inspector General of the Department of Health and Human Services from participation in Medicare, Medicaid, or any state health care program (defined at 42 CFR § 1001.2) pursuant to 42 CFR Part 1001. ImPACT Applications shall notify Customer within ten (10) days after it receives notice that it is a Sanctioned Person or Entity.

6.2 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTION 6.1, IMPACT APPLICATIONS DISCLAIMS ANY AND ALL WARRANTIES RELATING TO THE PRODUCT, THE PRODUCT INFRASTRUCTURE, OR ANY OTHER MATTER COVERED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IMPACT APPLICATIONS DOES NOT WARRANT THAT THE PRODUCT OR THE PRODUCT INFRASTRUCTURE WILL OPERATE WITHOUT INTERRUPTION OR DELAY AND/OR BE ERROR FREE, OR THAT ALL FAILURES OF THE PRODUCT TO CONFORM TO THE DOCUMENTATION CAN OR WILL BE CORRECTED. THE PRODUCT AND THE PRODUCT INFRASTRUCTURE ARE WARRANTED ONLY TO CUSTOMER, AND CUSTOMER SHALL NOT EXTEND ANY WARRANTIES OR MAKE ANY REPRESENTATIONS FOR OR ON BEHALF OF IMPACT APPLICATIONS OR IMPACT APPLICATIONS' LICENSORS TO ANY OTHER PERSONS.

6.3 Limitations of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST PROFITS OR BUSINESS, LOSS OF GOODWILL, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS RELATED TO DIAGNOSTIC ACCURACY AND/OR MEDICAL MALPRACTICE), REGARDLESS OF WHETHER SUCH DAMAGES ARISE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE AND REGARDLESS OF WHETHER SUCH PARTY IS ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. EXCEPTING INSTANCES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND THE SPECIFIC OBLIGATIONS OF IMPACT APPLICATIONS UNDER SECTION 6.1, THE AGGREGATE LIABILITY OF IMPACT APPLICATIONS FOR ANY AND ALL CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER SHALL NOT EXCEED THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH ANY SUCH CLAIM FIRST ARISES.

6.4 Consumer Protection Laws. THE PRODUCT IS A BUSINESS PRODUCT, THE APPLICATION OF WHICH IS COMMERCIAL, RATHER THAN CONSUMER-ORIENTED, IN NATURE, REGARDLESS OF THE NATURE OF ANY SUBLICENSES OR USE BY ANY PERSON OR ENTITY. IN EXECUTING THIS AGREEMENT, THE PARTIES RECOGNIZE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THAT CONSUMER PROTECTION LAWS IN ANY APPLICABLE TERRITORY SHALL NOT APPLY.

7. INFRINGEMENT INDEMNIFICATION

7.1 Indemnification by ImPACT Applications. ImPACT Applications hereby agrees to indemnify and hold harmless Customer from and against all damages, settlement amounts, costs, and expenses (including reasonable attorney's fees) that Customer may be required to pay to third parties to the extent such damages, settlement amounts, costs, and expenses are attributable to claims that the Product infringes or misappropriates a U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party, except such claims due to: (i) a breach by Customer of any provision of this Agreement; (ii) any Customer Materials; or (iii) use of the Product in combination with any software, hardware, or other equipment not provided by ImPACT Applications where the infringement or misappropriation would not have occurred but for such combination. Notwithstanding anything stated herein to the contrary, in no event shall ImPACT Applications be required to indemnify Customer in an amount or amounts, in the aggregate, in excess of the fees and payments ImPACT Applications has received hereunder.

7.2 Additional Obligation of ImPACT Applications. In the event Customer is enjoined or otherwise prohibited, or in ImPACT Applications' opinion is reasonably likely to be enjoined or otherwise prohibited, from using the Product as a result of any claim for which ImPACT Applications is required to indemnify Customer under Section 7.1 above, ImPACT Applications, at its own expense and option, shall, in addition to fulfilling its obligations described in Section 7.1, promptly: (i) procure for Customer the right to continue using the Product; (ii) modify the Product so that it becomes non-infringing without materially altering its capacity or performance; (iii) replace the Product with a product that is reasonably equivalent in capacity and performance but is non-infringing; or, if none of the foregoing remedies is available to ImPACT Applications on commercially reasonable terms; (iv) require Customer to cease using the Product and repay to Customer any prepaid fees and other amounts paid by Customer to ImPACT Applications hereunder.

7.3 Exclusive Remedy. Sections 7.1 and 7.2 state the entire obligation of ImPACT Applications and the exclusive remedy of Customer with respect to any actual or threatened claim that the Product, or use thereof by Customer or any End User, infringes or misappropriates the patent, copyright, trademark, trade secret, or other intellectual property rights of any person.

8. TERM AND TERMINATION

8.1 Term. The initial term of this Agreement (the "**Initial Term**") shall be one year from the Effective Date. This Agreement, and any amendments to Schedule A as set forth in Section 2.12, shall automatically renew for additional identical terms (each a "**Renewal Term**") under the then-current fee schedule for the Products and services, a copy of which will be provided to Customer upon request, unless Customer, at least thirty (30) business days prior to the end of the applicable term, provides ImPACT Applications with notice that this Agreement will expire at the end of the applicable term. As of the Effective Date any and all prior agreements related to the licensing of the Products between Customer and ImPACT Applications shall be terminated.

8.2 Termination. Subject to Section 5 of this Agreement, either party shall have the right to immediately terminate this Agreement by delivering written notice thereof to the other party if the other party fails to perform or comply with any material term or condition of this Agreement and does not cure such failure within thirty (30) days following its receipt of written notice thereof from the other party. Additionally, Customer may terminate this Agreement at any time with or without cause upon providing ImPACT Applications at least ninety (90) days prior written notice pursuant to Section 9.9. If, as a result of a change in law or regulation or a judicial or administrative interpretation, the performance by either party hereto of any provision of this

Agreement should jeopardize the licensure of Customer, its participation in Medicare, Medicaid, Blue Cross, or other reimbursement or payment programs, its exemption from taxation under Internal Revenue Code Section 501(c)(3) or its full accreditation by the Joint Commission, or if it should constitute a violation of any statute, regulation, or ordinance, Customer may request that this Agreement be renegotiated to eliminate the jeopardy and, if agreement is not then reached, terminate this Agreement.

8.3 Effect of Termination. Upon the earlier of the expiration or termination of this Agreement, or due to Customer's insolvency or bankruptcy: (i) all license rights of Customer under this Agreement shall automatically and immediately cease; (ii) Customer shall immediately cease all uses of the Product; (iii) Customer shall immediately delete all computer programs and files of ImPACT Applications from its computer systems and return to ImPACT Applications or destroy all Documentation, Training Materials, and/or Promotional Materials in its possession or control and shall certify in writing within ten (10) days from the date of such termination or expiration that such deletions, returns, or destructions have taken place; (iv) Customer shall immediately cease any and all use of the ImPACT Applications Marks and the Promotional Materials, including removing the ImPACT Applications Marks and the Promotional Materials from any website Customer operates; and (v) Customer shall return or destroy all Promotional Materials within thirty (30) days following termination or expiration, and shall certify same in writing. Customer shall no longer have any right or ability to market or license any of the Products, or to provide support related to the Products or offer training related to the Products. Customer agrees upon the effective date of such termination to pay all sums due to ImPACT Applications, return all proprietary information to ImPACT Applications, and provide ImPACT Applications with all outstanding reports, including lists of prospects, lists of sublicensees of Product, copies and/or originals of sublicensee acknowledgments Agreements, and details of any agreements or arrangements under which support has been subscribed for by licensees of Product for a period beyond the effective date of termination, and agrees to assign such agreements or arrangements to ImPACT Applications or to a third party company designated by ImPACT Applications. The following shall survive the expiration or sooner termination of this Agreement: the provisions of Sections 6, 7, 8, and 9; any payment obligations of the parties hereunder accruing prior to the date of such expiration or termination; and any other provisions herein expressly surviving such expiration or termination or necessary to interpret the respective rights and obligations of the parties hereunder.

9. GENERAL

9.1 Independent Contractors. In making and performing this Agreement, the parties are acting and shall act as independent contractors. Neither party is, nor will be deemed to

be, an agent, legal representative, joint venturer, franchisee, or partner of the other party for any purpose.

9.2 Force Majeure. In the event either party is unable to perform its obligations under the terms of this Agreement (other than the obligation to pay amounts due and owing hereunder) because of acts of God, strikes, equipment, or transmission failure or other causes reasonably beyond its control, such party shall not be liable to the other party for any damages resulting from such failure to perform or otherwise from such causes.

9.3 Governing Law. This Agreement and its subject matter shall be governed in accordance with the laws of the Commonwealth of Pennsylvania without regard to conflict of laws principles contained therein. All controversies arising hereunder shall be brought in the state and federal courts located in Allegheny County, Pennsylvania. The parties hereby consent to the exclusive jurisdiction of the State and Federal Courts located in Allegheny County, Pennsylvania and hereby agree to waive any claim or defense of inconvenient forum or governmental immunity. The parties specifically exclude application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement. In any suit or proceeding between the parties relating to this Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys and other professionals incurred in connection with the suit or proceeding, including costs, fees, and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.

9.4 Public Statements. Either party may disclose the existence of this Agreement, but shall not represent to any third party any positions, statements, intentions, terms of this Agreement, or other actions on behalf of the other. Neither party shall use the other party's name, trademarks, or service marks or issue any press release or similar public statement without the other party's prior written consent which shall not be unreasonably withheld or delayed.

9.5 Confidentiality. The parties (each, a "**Recipient**") agree to use all information concerning the other party (each, a "**Discloser**") and the Discloser's respective subsidiaries and affiliates furnished by or on behalf of the Discloser hereunder (collectively, the "**Confidential Information**") solely for the purpose of the transactions contemplated hereby. The Confidential Information will be kept confidential by the Recipient and its agents unless such Confidential Information: (i) is required to be disclosed by law; (ii) is disclosed pursuant to the Discloser's prior written consent; or (iii) otherwise becomes non-confidential as described below. Upon termination of this Agreement, the Recipient will return all Confidential Information as may be requested by the Discloser. The term "Confidential Information"

shall not be deemed to include information which: (i) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known or available; (ii) is known by the Recipient at the time of receiving such information as evidenced by its records created prior to the date of this Agreement; (iii) is hereafter furnished to the Recipient by a third party, as a matter of right and without restriction on disclosure; (iv) is independently developed by the Recipient without any breach of this Agreement; or (v) is the subject of a written permission to disclose provided by the Discloser.

9.6 Privacy Adherence. In addition to the requirements of Section 2.3, the parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "**Privacy Standard**") promulgated in accordance with the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"). ImPACT Applications understands that Customer is a "covered entity" as defined by HIPAA. In the course of carrying out its obligations in accordance with this Agreement, ImPACT Applications will have access to individually identifiable health information of Customer patients, thereby creating a Business Associate relationship between Customer and ImPACT Applications. In compliance with HIPAA, Customer has requested ImPACT Applications, and ImPACT Applications has agreed, to abide by the terms and conditions of this Section 9.6 governing the use of Protected Health Information ("**PHI**"). Unless otherwise defined in the Section 9.6, capitalized terms shall have the meaning established by 45 CFR §§ 160.103 and 164.501. ImPACT Applications may use or disclose PHI in accordance with this Section 9.6 provided such use or disclosure by Customer would not violate the Privacy Standard. ImPACT Applications shall comply with the requirements of the Privacy Standard related to PHI. Specifically, ImPACT Applications shall:

- i. Not use or further disclose PHI other than as permitted or required by this Section 9.6 or as required by law (as such term is defined by the Privacy Standard);
- ii. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Section 9.6;
- iii. Report to Customer any use or disclosure of the PHI not provided for by this Section 9.6 of which ImPACT Applications becomes aware;
- iv. Mitigate, to the extent practicable, any harmful effect that is known to ImPACT Applications of a use or disclosure of PHI not permitted by this Section 9.6;
- v. Make PHI available in accordance with 45 CFR § 164.524;
- vi. Make available for amendment and incorporate any amendments to PHI in accordance with 45 CFR § 164.526;

vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

viii. Make ImPACT Applications' internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received on behalf of, Customer available to the United States Secretary of Health and Human Services for purposes of determining Customer's compliance with the Privacy Rule.

Upon expiration of this Agreement ImPACT Applications shall either return to Customer (at Customer's sole expense) or destroy all PHI received from, or created or received on behalf of Customer (including all copies thereof) in ImPACT Applications' possession or under ImPACT Applications' control; or if return or destruction is not feasible, extend protections of this Section 9.6 to the PHI and limit further uses and disclosures to those purposes that make return or destruction infeasible.

9.7 Third Party Beneficiaries. End Users are not and will not be deemed to be third party beneficiaries of this Agreement, or to have any contractual relationship with ImPACT Applications by reason of this Agreement. Customer hereby agrees to indemnify and hold harmless ImPACT Applications from any and all damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) suffered or incurred by ImPACT Applications or its affiliates in connection with any claims brought by End Users against ImPACT Applications or its affiliates that arise from or in connection with the Product or any other matter covered by this Agreement.

9.8 Insurance. ImPACT Applications shall maintain for the term of this Agreement general liability insurance with a combined single limit of at least One Million Dollars (US\$1,000,000.00) for any claim arising out of a single occurrence.

9.9 Miscellaneous. Customer may not assign any of its rights or privileges, or delegate any of its duties or obligations hereunder, in whole or in part, by operational of law or otherwise, to any third party without the prior written consent of ImPACT Applications. Customer's merger or consolidation with another entity or health care system shall not be considered an assignment requiring the prior written consent of ImPACT Applications provided that the surviving entity assumes all of Customer's obligations hereunder without qualification or condition. This Agreement shall be freely assignable by ImPACT Applications upon thirty (30) days prior written notice to Customer. Any attempted assignment or delegation of this Agreement or any duties or obligations hereunder in violation of the foregoing limitations shall be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. All notices required to be in writing shall be delivered by hand, sent by recognized overnight courier (such as Federal Express or

UPS), electronic mail, or mailed by certified or registered mail, return receipt requested, postage pre-paid, addressed to the parties set forth above. This Agreement, including all schedules attached hereto, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior understandings and agreements between the parties, whether written or oral, regarding the subject matter hereof. This Agreement may not be amended, supplemented, or otherwise modified except by an instrument in writing signed by both parties. Any of the provisions of this Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof or affecting the validity or unenforceability of any of the terms of this Agreement in any other jurisdiction. A waiver by either party of a breach or violation of any provision of this Agreement will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of this Agreement. The headings contained in this Agreement are for convenience only and shall not affect meaning or interpretation of this Agreement. This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the original or facsimile signature of each of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon, but all of which together shall constitute but one in the same instrument.

* * *

IN WITNESS WHEREOF, the undersigned have duly executed this Services Agreement as of the date first set forth above.

IMPACT APPLICATIONS:

IMPACT APPLICATIONS, INC.

By: _____
Name: Michael Wahlster
Title: Chief Executive Officer

CUSTOMER:

Sign: _____
Print Name: _____
Title: _____
Email: _____
Fax Number: _____
Address: _____

Schedule A

School District/Volume Pricing

ImPACT and/or ImPACT Pediatric baseline tests (minimum aggregate purchase of 300 with a minimum of either 50 ImPACT or 50 ImPACT Pediatric baseline tests):

| | |
|---------------|-------------|
| 300 – 4,999 | \$2.75 each |
| 5,000 – 9,999 | \$2.25 each |
| 10,000+ | \$1.75 each |

Post Injury Tests (minimum aggregate purchase of 50 with a minimum of either 25 ImPACT or 25 ImPACT Pediatric Post Injury Tests):

| | |
|----------|--------------|
| 50 – 499 | \$12.00 each |
| 500+ | \$10.20 each |

Additional Individual Tests

| | |
|--------------------|---------------------------------------|
| Baseline Tests: | \$15.00 each (minimum purchase of 10) |
| Post Injury Tests: | \$30.00 each (minimum purchase of 5) |

ImPACT QuickTest – Description and Pricing

| | |
|---------------------------------------------------------|----------|
| QuickTest: An annual subscription for unlimited testing | \$249.00 |
|---------------------------------------------------------|----------|

Customer will have access to unlimited use of the QuickTest testing for the entirety of the one year subscription period, provided however Customer understands and agrees: i) this is an introductory price offering; ii) pricing is not subject to the Renewal Term provisions in Section 8 of this Agreement; and iii) prices may increase without the need for a formalized amendment to this Schedule A of the Agreement following the completion of the Initial Term or any subsequent Renewal Term.

General Service Description

ImPACT is reachable over the internet from any industry standard browser. ImPACT Pediatric is available as part of the ImPACT Toolkit app available from the Apple App Store at <http://appstore.com/impacttoolkit>.

Customer Configuration and Installation

Please see https://www.impacttestonline.com/htmlcc/Files/sports/qrg_enus.pdf

Availability and Maintenance

ImPACT Applications will use commercially reasonable efforts to make the Products available for Customer use with four (4) hours reserved for maintenance downtimes per week. These maintenance windows may require additional time. Customer designated system administrators will be notified via email 24 hours in advance of any unscheduled down time.

Automated back-ups are performed on all Customer data.

Service Delivery

ImPACT Applications provides support on-line via e-mail only during Normal Business Hours, 7:00 a.m. CST to 7:00 p.m. CST, Monday through Friday, excluding legal holidays. ImPACT Applications provides technical support only

to the Customer. It is Customer's sole responsibility to provide support to End Users.

Documentation

The computer requirements for ImPACT:

https://www.impacttestonline.com/htmlcc/Files/sports/grg_enus.pdf

Device requirements for ImPACT Pediatric:

ImPACT Pediatric is currently available for use with an Apple® iPad tablet device that is running iOS Version 8 or higher. This test battery is not standardized for use with the Apple iPad mini due to screen size limitations.

Clinical Reports

Reports are available for Customer's authorized personnel to generate and use in managing the Customer's End Users.

The IMPACT Applications Inc. W9 tax form can be downloaded at:
www.impacttest.com/pdf/W9Form.pdf