



# SAYAH PERFORMANCE MEASUREMENT TOOL

## License Agreement: TERMS OF SERVICE

Updated on April 6, 2016

### IMPORTANT – READ CAREFULLY:

THIS IS A LEGAL AGREEMENT ("AGREEMENT") BETWEEN CUSTOMER AND SAYAH INC. BY EXECUTING A SALES AGREEMENT ACCESSING AND/OR USING THE SERVICE(S), YOU ARE AGREEING, ON BEHALF OF YOURSELF AND/OR YOUR COMPANY, TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT ACCESS AND/OR USE THE SERVICE(S).

- **1. Definitions.** As used in this Agreement, the following defined terms shall apply:
  - 1.1. Agreement means these Terms of Service as may be amended from time to time and any other documents incorporated by reference.
  - 1.2. SayAh Inc. (SayAh) means SayAh, Inc., a Missouri corporation.
  - 1.3. Confidential Information means any non-public information and/or materials provided by a Party under this Agreement to the other Party and reasonably understood to be confidential.
  - 1.4. Customer means the legal entity or individual that enters into this Agreement.
  - 1.5. Effective Date means the date of acceptance of this Agreement by Customer.
  - 1.6. Intentionally Deleted
  - 1.7. Party means individually Customer or SayAh and Parties means Customer and SayAh collectively.
  - 1.8. Payment Information means limited Customer information related to billing and payment matters collected by SayAh during the contracting process. Such Payment Information will include a bank account with sufficient funds for SayAh to draft by Automated Clearing House (ACH) or valid debit card or credit card number with available credit sufficient to pay the applicable License Fees, an election of a preferred billing frequency, and other information as required by SayAh.
  - 1.9. Privacy Policy means the SayAh Privacy Policy attached hereto as Exhibit 2 and made a part hereof.
  - 1.10. Contracting Data means limited Customer information collected by SayAh during the contracting process.
  - 1.11. Services means the generally available services, provided by SayAh to Customer, as subscribed to by Customer hereunder. The Services are described on Exhibit 1 and SayAh may update the Services at any time in order to maintain the effectiveness of the Services.
  - 1.12. License Fee means the fee for Customer's use of and access to the Services as subscribed to by Customer.
  - 1.13. Term means the term of this Agreement commencing on the Effective Date and continuing until the expiration of all License period(s), including any renewal license period(s), for Services. This Agreement shall automatically renew for the term selected unless terminated by Customer upon thirty (30) days written notice prior to the end of the contracted term.



## 2. Customer Rights and Restrictions.

2.1. **Customer Access and Use.** During the Term of this Agreement, and upon payment of all applicable License Fees, Customer may access and use the Services pursuant to and in accordance with the provisions of this Agreement. SayAh will enable Customer and its Named Authorized Users to access and utilize the Services as contemplated by the Agreement. Thereafter, Customer shall be solely responsible for selecting and managing its users and providing each of them with the information necessary for access to and use of the Services. Customer may reassign Named Authorized Users, Devices and/or Server(s) without incurring additional fees provided that the number of such Named Authorized Users, Devices and/or Server(s) does not increase. Customer may inform its users, customers and employees that the Services are powered by SayAh. If Customer's broadband connection fails, the Services and some related voice service will also fail. The Services may cease to function if there is a power cut or failure. These failures may be caused by reasons outside of the control of SayAh.

- 2.2. **Reverse Engineering.** Except to the extent permitted by law, Customer may not modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile or otherwise attempt to decipher any code used in connection with the Services and/or any other aspect of SayAh's technology.
- 2.3. **Abuse.** Customer shall not access and/or engage in any use of the Services (i) in a manner that abuses or materially disrupts the networks, security systems, Services and/or websites of SayAh and/or (ii) to communicate any message or material that is deemed harassing, threatening, indecent, obscene, slanderous, or otherwise unlawful.
- 2.4. **Illegal Purposes.** Customer shall not use the Services for fraudulent or illegal purposes.
- 2.5. **Resale.** Customer shall not market, offer to sell, sell and/or otherwise resell the Services to any third Party.
- 2.6. **No Representation by Customer.** Neither Customer nor any of its Named Authorized Users, customers, employees or representatives shall make any representations with respect to SayAh, the Services or this Agreement (including, without limitation, that SayAh is a warrantor or co-seller of any of Customer's products and/or services).
- 2.7. **Cookies.** By using the SayAh's Services or websites, Customer agrees to the use of cookies. Cookies are small text files that contain data and are used to enhance Customer's experience. SayAh uses cookies to facilitate the use of the Services and websites. Analytical cookies are used to collect information to improve how the Services and websites work. Functional cookies are used to store Customer's preferences and improve the functionality of the Services.
- 2.8. **Limited Grant of Rights.** No other rights are granted hereunder to Customer except as expressly set forth in this Agreement.

- **3. Contracting.** To subscribe to Services, Customer must complete the contracting process including Customer's acceptance of this Agreement, and SayAh must then accept such contracting. SayAh may reject a potential Customer in its sole discretion and is not obligated to provide a reason for its rejection.

- 3.1. **Contracting Data.** All Contracting Data provided by or on behalf of Customer must be current, complete and accurate, and Customer is solely responsible for updating such Contracting Data as necessary. SayAh reserves the right to terminate this Agreement immediately in the event any Contracting Data is found to be inaccurate, incomplete and/or not current at any time. Customer is hereby informed that Contracting Data is subject to automatic processing by SayAh for the purposes of managing Customer's account. Customer will have access to Contracting Data and may update or correct it as necessary.
- 3.2. **Account Password/Security.** As part of the contracting process, Customer will choose a password and a user name. Customer is entirely responsible for maintaining the confidentiality of its password and account, and Customer is solely responsible for any and all activities that occur under its account. Customer agrees to notify SayAh immediately of any unauthorized use of its account or any other breach of security. SayAh shall not be liable for any loss that Customer may incur as a result of a third party using its password or account, either with or without its knowledge. Customer may be held liable for losses incurred by SayAh and/or another party due to a third party using Customer's account or password.
- 3.3. **Payment Information.** All Payment Information provided by or on behalf of Customer must be current, complete and accurate, and Customer is solely responsible for updating such Payment Information as necessary. Customer hereby authorizes SayAh, from time to time, to take steps to determine whether the ACH bank account number or debit card or credit card number provided is valid. SayAh reserves the right to terminate this Agreement immediately in the event any Payment Information is found to be inaccurate, incomplete and/or not current at any time. SayAh shall not be responsible for any overdraft charge or other fees that may be incurred by SayAh's use of Customer's debit card or credit card for payment hereunder.
- 3.4. **Trial and Promotional Offers.** From time to time, SayAh may offer certain trial and/or promotional offers. SayAh reserves the right to discontinue or modify coupons, credits, trials and promotional offers at its discretion and without notice. Any such trial or promotional offers may not be combined with other coupons, credits, trials, promotions or any other discounts, and are limited to one (1) per Customer.



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- **3.5. Privacy Policy and Business Associate Agreement.** SayAh's use of any information provided by Customer, including without limitation, Contracting Data and Payment Information, is set forth in SayAh's current Privacy Policy (Exhibit 2). The access to any medical data (inadvertent or otherwise) is covered in Exhibit 3 Business Associate Agreement.

## 4. Term and Termination.

- **4.1. Term.** This Agreement shall commence on the Effective Date and continue for the Term. Term shall be defined as monthly or annually depending upon the payment method selected by Customer.
- **4.2. Termination for Cause.** SayAh reserves the right to terminate this Agreement immediately if Customer breaches any of its material obligations under this Agreement.
- **4.3. Effect of Termination.** Upon termination of this Agreement, Customer will immediately discontinue all access to and use of the Services and cease to represent in any form that it is a user of the Services. SayAh will immediately disable Customer's account upon termination. Neither Party shall be liable for any damages resulting from a termination of this Agreement in accordance with this Section 4.3; provided, however, the termination of this Agreement shall not affect any claim arising prior to such termination. There shall be no refund of a paid license upon termination.

## 5. Fees and Charges.

- **5.1. License Fees.** Customer is responsible for all License Fees, and hereby authorizes SayAh to obtain payment of all such License Fees in accordance with the Payment Information provided by Customer. Customer shall also be responsible for all applicable taxes (withholding tax, sales tax, services tax, value-added tax (VAT), goods and services tax (GST), etc.) or duties imposed by any government entity or collecting agency EXCEPT those taxes based on SayAh's net income. In the event Customer fails to satisfy its tax and/or duty obligations herein, Customer shall reimburse SayAh upon demand for any taxes and/or duties paid on behalf of Customer and shall indemnify and hold SayAh harmless against any claim and/or liability (including penalties) resulting from Customer's failure to pay such taxes and/or duties.
- **5.2. Voice and Data Charges.** Customer shall be responsible for all fees and charges imposed on Customer by Customer's telephone carriers, wireless providers, and other voice and/or data transmission providers for voice and/or data transmission used by Customer to access and use the Services.

- **6. Confidentiality.** Unless expressly authorized in writing by the other Party, neither Party shall disclose to any third party any Confidential Information of the other Party, nor use such Confidential Information in any manner other than to perform its obligations under this Agreement. The foregoing restrictions do not apply to any information that (i) is publicly disclosed through no fault of the receiving Party, (ii) is already lawfully in the receiving Party's possession and not subject to a confidentiality obligation to the disclosing Party, (iii) becomes known to the receiving Party from a third party having an apparent bona fide right to disclose the information, or (iv) is Confidential Information that the receiving Party is obligated to produce pursuant to an order of a court of competent jurisdiction or a valid administrative subpoena, provided receiving Party supplies disclosing Party with timely notice of such court order or subpoena. Furthermore, Customer will keep in confidence all passwords and/or other access information related to the Services. Customer acknowledges that SayAh, and its licensors, retain all intellectual property rights and title, in and to, all of their Confidential Information and/or other proprietary information. This shall include, but not be limited to: products, services, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the Services provided by SayAh hereunder.

- **7. WARRANTY.** SAYAH WARRANTS THAT (i) ANY SERVICES PROVIDED HEREUNDER WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER; (ii) THE SERVICES WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE APPLICABLE SERVICE DOCUMENTATION UNDER NORMAL USE AND CIRCUMSTANCES; AND, (iii) THE FUNCTIONALITY OF THE SERVICES WILL NOT BE MATERIALLY DECREASED DURING THE TERM. SAYAH'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER THIS WARRANTY WILL BE, AT THE SOLE OPTION OF SAYAH AND SUBJECT TO APPLICABLE LAW, TO PROVIDE RESTORED SERVICE(S) WHICH CONFORMS TO THESE WARRANTIES OR TO TERMINATE THE SERVICE(S) AND PROVIDE A PRO-RATED REFUND OF ANY PREPAID SUBSCRIPTION FEES (FOR THE PERIOD FROM THE DATE OF THE BREACH THROUGH TO THE END OF THE TERM). TO THE EXTENT PERMITTED BY APPLICABLE LAW, SAYAH DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SAYAH MAKES NO WARRANTY THAT ANY OF THE SERVICES WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE. SOME



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JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES AND CONDITIONS, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER.

- **8. LIMITATION ON LIABILITY.** IN NO EVENT SHALL SAYAH BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY OR OTHER DAMAGES RELATED TO THIS AGREEMENT OR WHETHER DIRECT OR INDIRECT: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, (iv) LOST PROFITS, AND (v) COSTS OF RECOVERY OR ANY OTHER DAMAGES, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, AND INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR OTHERWISE, AND WHETHER OR NOT SayAh HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SAYAH'S LIABILITY HEREUNDER IS LIMITED TO \$50.00. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.
- **9. Choice of Law and Location for Resolving Disputes. Governing Law.** This Agreement shall in all respects be governed by and interpreted, construed and enforced in the State of Missouri in accordance with the laws of the State of Missouri, without regard for its conflict of laws provisions.

## 10. Additional Terms.

- **10.1. Relationship of the Parties.** Customer and SayAh are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- **10.2. Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part, and any such attempted assignment or delegation shall be void.
- **10.3. Force Majeure.** Neither Party will be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond its reasonable control, but only for so long as such conditions persist. Force majeure events include, but are not limited to: natural disasters (e.g., lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; activities of local exchange carriers, telephone carriers, wireless carriers, Internet service providers, and other third parties; explosions and fires; embargoes, strikes, and labor disputes; governmental decrees; and any other cause beyond the reasonable control of a Party.
- **10.4. Notice.** SayAh may provide Customer with notice via email, regular mail and/or postings on the SayAh website.
- **10.5. High-Risk Use.** Customer hereby acknowledges that the Services are not designed or intended for access and/or use in or during high-risk activities including, but not limited to: medical procedures; control of aircraft, air traffic, aircraft navigation or aircraft communications; or the design, construction, operation or maintenance of any nuclear facility. SayAh hereby expressly disclaims any express or implied warranty of fitness for such purposes.
- **10.6. Compliance with Laws.** Both Parties agree to comply with all applicable local, state, national and foreign laws, rules, and regulations, including, but not limited to, all applicable export and import laws and regulations, in connection with their performance, access and/or use of the Services under this Agreement. Notwithstanding the preceding sentence SayAh does not guarantee that the Services shall be appropriate and/or available for use in any particular location and Customer is responsible for compliance with local laws to the extent applicable. SayAh reserves the right to modify the Services for any reason, without notice and without liability to Customer or any end user. Customer shall comply with all legal duties applicable to the Customer including obligations as data controller. Notwithstanding any other provision in this Agreement, SayAh shall have the right to terminate this Agreement immediately upon the determination by SayAh that Customer is not in compliance with U.S. export laws or violates any government privacy and/or data protection laws.
- **10.7. No Waiver.** The failure of either Customer or SayAh in any one or more instance(s) to insist upon strict performance of any of the terms of this Agreement will not be construed as a waiver or relinquishment of the right to assert or rely upon any such term(s) on any future occasion(s).
- **10.8. Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect and the Parties agree to comply with the remaining terms of this Agreement in a manner consistent with the original intent of the Agreement.
- **10.9. No Third Party Beneficiaries.** No person or entity not a party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof.



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- 10.10. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and understandings with respect to the same. No waiver or amendment of any term or condition of this Agreement shall be valid or binding on either Party unless agreed to in writing by both Parties.
- 10.11. **Captions and Headings.** Captions and headings are used herein for convenience only, are not a part of this Agreement, and shall not be used in interpreting or construing this Agreement.
- 10.12. **Controlling Language.** The English language version of this Agreement shall be the controlling version and is incorporated by reference into any translation of this Agreement. Any translation or other language version of this Agreement shall be provided for informational purposes only.
- 10.13. **References.** Pronouns contained in this Agreement shall apply equally to the feminine, neuter and masculine genders. The singular shall include the plural, and the plural shall include the singular.
- 10.14. **Beta version.** The terms of this subsection 10.14 shall only apply to Customer with respect to any "Beta" version of any of the Services (the "**Beta Services**") made available to Customer for purposes of evaluation and feedback. Customer acknowledges that the Beta Service(s) Customer is evaluating may contain bugs, errors and other problems and is provided to Customer "as-is." Therefore, to the extent permitted by applicable law, SayAh disclaims any warranty, condition and/or liability obligations to Customer of any kind with respect to the Beta Services. Customer further acknowledges the importance of communication between SayAh and Customer during Customer's use of the Beta Services and participation in SayAh's Beta program and hereby agrees to receive related correspondence and updates from SayAh. In the event Customer requests to opt-out from such communications, Customer's participation in the SayAh Beta program will be canceled. Customer also hereby acknowledges that SayAh has not made any representations, promises or guarantees that the Beta Services will ever be announced or made available to anyone in the future and that SayAh has no express or implied obligation to Customer to announce or introduce the Beta Services. During the SayAh Beta program, Customer will be asked to provide feedback regarding Customer's use of the Beta Service(s) and Customer hereby grants to SayAh a perpetual, royalty-free worldwide license to use and/or incorporate such feedback into any SayAh product or service (including the Beta Services) at any time at the sole discretion of SayAh. With respect to the Beta Services, this subsection shall supersede any other terms and conditions contained herein, but only to the extent necessary to resolve conflict.

## EXHIBIT 1

### DESCRIPTION OF SERVICES

- 1. **Description of Services.** The selection(s) made and submitted by Customer during the contracting process will identify the specific Service(s) subscribed to by Customer hereunder and the number of Named Authorized Users for each Service. Notwithstanding, this Agreement will apply to any Services subscribed to by Customer at any time on or after the Effective Date. The following describes the Services currently offered by SayAh:
  - 1.1. **Access & Cloud Services.** SayAh's product systems operate entirely in the "Cloud", securing Customer operations, systems and associated records. Access, activation, administration and analysis of SayAh's system can be performed on any device connected to the internet.
  - 1.2. **Collaboration Services.** Customers receive online training materials via emails, webinars, operating manuals, and quick start guides. Customers may directly contact SayAh staff via email and / or toll-free phone service for assistance with questions, trouble shooting, problem solving.
  - 1.3. **IT Support.** SayAh's system and associated functionality are supported by high quality, customer driven IT Support Staff that provide solutions to Customer issues that include...system problem resolution; provision of password-driven security levels; system utilization monitoring and maintenance; and, search engine optimization.
  - 1.4. **Services Definitions.** This Agreement gives the customer access to SayAh's automated digital patient surveys, including:
    - 1.4.1. Survey questions (standard & custom) measure key physician(s) & practice metrics.
    - 1.4.2. Real-time data delivery facilitates analysis through SayAh's Dashboard Analytics Module.
    - 1.4.3. Survey alerts provide immediate notice to physician(s) & staff via web connected device.
    - 1.4.4. Anonymity and / or home email survey options are available to patients.
    - 1.4.5. Patients survey verification options facilitate direct publication to the web.



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➤ 1.4.6. Online publishing of patient ratings & comments to the physician's SayAh web page.

- **2. Customer Access and Use.** During the Term of this Agreement, and upon payment of all applicable Fees, Customer may access and use the Services subscribed to hereunder pursuant to and in accordance with the provisions of this Agreement. SayAh will enable Customer and its Named Authorized Users to access and utilize the Services as contemplated by the Agreement. Thereafter, Customer shall be solely responsible for selecting and managing its users and providing each of them with the information necessary for access to and use of the Services. Customer may reassign Named Authorized Users, Devices and/or Server(s) without incurring additional fees provided that the number of such Named Authorized Users, Devices and/or Server(s) does not increase. Customer may inform its users, customers and employees that the Services are powered by SayAh. If Customer's broadband connection fails, the Services and some related voice service will also fail. The Services may cease to function if there is a power cut or failure. These failures may be caused by reasons outside of the control of SayAh.
- **4. Training.** In connection with the Services subscribed to hereunder, Customer shall have access to generally available remote training session(s) for all individuals who are either Named Authorized Users or authorized by Customer to access the Services.
- **5. Privacy.** SayAh's Privacy Policy may be viewed at sayah.com. SayAh reserves the right to modify the privacy policies in its reasonable discretion from time to time.
- **6. Data Protection.** To the extent the Services store or process personal data on behalf of Customers, SayAh shall maintain such personal data in accordance with the applicable privacy policy and shall disclose such personal data only pursuant to instructions from Customer or as required by law. SayAh has implemented appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access.

## Exhibit 2

### Privacy Policy

#### Overview Privacy

SayAh is committed to respecting your privacy. This privacy statement discloses the privacy practices of SayAh.

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From time to time, SayAh Inc. may introduce new products and services. To the extent that these new products and services affect this policy, this policy will be updated. Please see item number 5 for details on how we notify users of updates to our privacy policy.

### 1. Why is my information needed?

SayAh Inc. products are web based; because of this they may require the use of first and last names, billing contact information, a password and a valid email address as a login. Therefore, at a minimum, we may require such necessary information in order to establish your account with us.

### 2. What information does SayAh Inc. gather/track and how is it used?

**PERSONAL INFORMATION:** We collect personal information from users including (at minimum) first and last names, an email address to be used as a login, billing contact information, bank account or credit card number and a password. Your email address may be used to send you periodic product newsletters, offers and usage tips from SayAh Inc.. You can opt out of promotional emails at any time, but will still receive communications such as receipts, confirmation emails and customer service updates that are considered necessary to provide the service to you. We use the information collected to deliver services, process payments, update our records, communicate with you about products and services, and generally maintain your accounts with us. We will retain your information for as long as your account is active, as needed to provide you services, to comply with our legal obligations, resolve disputes, and enforce our agreements. If you wish to cancel your account or request that we no longer use your information to provide you services contact us at [admin@sayah.com](mailto:admin@sayah.com). We do not share, sell, trade, or rent your personal information to third parties except as described in this privacy policy.

Information gathered by SayAh is done so on a voluntary basis. You need not provide us with any personal information to use these sites. Information submitted on these sites can include contact information such as email addresses, comments on blog postings and job and press inquiries. To request removal of your personal information from our blog, contact us at [admin@sayah.com](mailto:admin@sayah.com). In some cases, we may not be able to remove your personal information, in which case we will let you know if we are unable to do so and why.

Because of our commitment to present the best possible product to all our users, we track the category of services selected by our individual users as well as all information pertaining to user satisfaction. To ensure the quality of our product, we reserve the right to maintain evaluation and feedback records.

**BUSINESS INFORMATION:** Information that is collected by our products is considered confidential. We will not view Business Information except as necessary to appropriately support the service or as required by law. SayAh Inc. may store that information to fulfill our obligation to our customers.

**SECURITY INFORMATION:** SayAh Inc. also collects certain standard information about your computer for security and identification purposes. This information may include: IP addresses, domain names, access times, cookies and other unique identifying information of machines that have our software downloaded and installed on them. This information is used for the operation of the service, to identify and protect our customers and to control unauthorized use or abuse of our services. All information is encrypted during transmission and is stored securely within our servers.

**SURVEYS:** In addition to required member information, we may conduct surveys and ask users to volunteer demographic information to be used on an aggregate basis for internal market research, presentation to advertisers and joint research projects with outside companies involved in product development. We use such information to better focus our product and personalize the scope of services offered to each individual user.

**WEB ANALYTICS:** We continuously improve our websites and utilize different web analytic tools to help us do so. We are interested in how visitors use our websites, what they like and dislike, and where they have problems. We also use web analytic tools on our mobile applications to help gather non-personally identifiable data about download and application



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usage. In our use of web analytics we do not collect GeoLocation data. The web beacons used in connection with our web analytics services do not share any personally identifiable information about our website and application visitors with third parties. Our tools may gather data such as what browser a person uses, what operating systems are used, what is downloaded, and what content, products and services are reviewed when visiting or registering for services at one of our websites or mobile applications. This information is used solely to assist SayAh Inc. in maintaining a more effective and useful website for our customers.

We track aggregate traffic patterns throughout our site but we do not correlate this information with personally identifiable data about individual users. We track domain names, browser types and MIME type. Such information will not be passed to third parties without your prior consent unless where required by applicable law.

**COOKIES:** A cookie is a small data file that certain websites write to your hard drive when you visit them. We use cookies to track user traffic patterns and hold certain contracting information. When you register at SayAh Inc. sites, we use cookies to store unique, randomly assigned user IDs that we generate for administrative purposes. These cookies enable you to enter the SayAh Inc. sites without having to log on each time. We do not store passwords or any Personal Information about you in the cookies.

The Help menu on the menu bar of most browsers will tell you how to prevent your browser from accepting new cookies, how to have the browser notify you when you receive a new cookie and how to disable cookies altogether. You can still review the website if you choose to set your browser to refuse all cookies; however, you must enable cookies in order to establish an account and to download and install any of the software.

### 3. With whom does SayAh Inc. share the information?

Ensuring your privacy is important to us. We do not sell, trade or rent your personal information to third parties.

SayAh Inc. products and services by necessity require us to provide some of your information to third parties. We may occasionally employ other companies to perform functions on our behalf. Examples include processing credit card payments, sending postal mail and email, analyzing data and providing marketing assistance. They have access to personal information needed only to perform their functions and may not use it for any other purpose. Further, they must process the personal information in accordance with this Privacy Policy. Also, in the event that SayAh Inc. or substantially all of its assets are acquired, customer information will be one of the transferred assets. For more information on how you will be notified in this instance, see Section 5 below.

We encourage you to be aware when you leave our site and to read the privacy statements of each and every website that collects personally identifiable information.

### 4. How can I review, correct and update my personal information?

If you wish to change or review your personal information, e-mail [admin@sayah.com](mailto:admin@sayah.com) and the information will be sent or the change will be made then a confirmation sent. There you can access or update the personal information and account history we have on file. You can also change your email license status to receive our newsletter, and our email marketing communications including promotions we send on behalf of third-parties. Please contact us at [admin@sayah.com](mailto:admin@sayah.com) if you need assistance in updating or reviewing your information. SayAh Inc. will respond to your request to review the information we have on file for you within 30 days.

### 5. How can I opt out of SayAh Inc.'s collection, use and distribution of my information?

To change your email license status to receive or to stop receiving marketing communications or third-party promotions administered by SayAh Inc. or to opt out of SayAh Inc.'s collection, use and distribution of your information as stated above, please go to the Unsubscribe page, enter your email address and then click Submit. Users who would like to deactivate their account can contact us at [admin@sayah.com](mailto:admin@sayah.com) for assistance.





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This privacy policy is subject to change. If we are going to use your personally identifiable information in a manner materially different from that stated at the time of collection, we will notify you via email prior to the changes taking effect. If SayAh Inc. or any of its assets are acquired by another company we will notify you via email about this transaction and the transfer of your personal information. You will have a choice as to whether or not you consent to the usage of your information in a different manner. In addition, if we make any material changes in our privacy practices that do not affect user information already stored in our database, we will post a prominent notice on our website notifying users of the change.

### 6. How does SayAh Inc. protect my information from loss, misuse or alteration?

SayAh Inc. uses industry-standard efforts to safeguard the confidentiality of personally identifiable information, including encryption, firewalls and SSL (Secure Sockets Layer). Nevertheless, we remind you that no security measure is perfect.

SayAh Inc. is not liable for loss of passwords due to user carelessness. If you lose control over your password, you may lose control over your personally identifiable information. If you believe your password has been compromised, we recommend that you immediately change your password. For information on how to do this, please see item number 4 above.

### 7. What does SayAh Inc. do with Referral information?

We do not collect or store any personal information as part of our referral program. If you would like to send a friend or colleague information about our product, we will provide you with an email text or link that you can send to them from your email account.

### 8. Who can I ask if I have additional questions?

For additional inquiries about the privacy of your information, you can contact SayAh Inc. via email at [admin@sayah.com](mailto:admin@sayah.com), by calling 888-831-9490 or by writing to us via regular mail at: SayAh Inc., 10231 South M Highway, Walker, MO 64790.

## EXHIBIT 3

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") with an Effective Date" as provided in the License Agreement is entered into by and between **SayAh Inc.** ("Business Associate") and **Customer** ("Covered Entity").

### RECITALS

- 1) The purpose of this Agreement is to comply with the Standards for Privacy of Individually Identifiable Health Information ("protected health information") published on December 28, 2000 and revised on August 14, 2002, by the Secretary of the U.S. Department of Health and Human Services ("HHS") to amend 45 C.F.R. Part 160 and Part 164 (the "Privacy Regulation") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Further, this agreement is designed to comply with the Security Regulations, 45 CFR Part 160 and 164, finalized on February 20, 2003.
- 2) Terms used in this agreement, including "Protected Health Information" and "Security Incident", shall have the same meaning as defined in the above referenced regulations.
- 3) The parties have an arrangement for Business Associate to provide services related to the Sales Agreement and the License Agreement dispensing, the "Services Agreement", to Covered Entity. Attachment A below specifies Business Associate's allowed uses and disclosures of Protected Health Information while performing these services.
- 4) This Agreement sets forth the terms and conditions pursuant to which protected health information that is provided by, or created or received by, the Business Associate from or on behalf of the Covered Entity will be handled.



## SAYAH PERFORMANCE MEASUREMENT TOOL

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the parties agree as follows:

- 1) **Services.** The Business Associate provides services for the Covered Entity that involve the use and disclosure of protected health information which services are described in Attachment A hereto. Except as otherwise specified herein, the Business Associate may make any and all uses of protected health information necessary to perform its obligations as set forth in Attachment A and/or under the Services Agreement between the parties. Additionally, Business Associate may disclose protected health information for the purposes authorized by this Agreement only (a) to its employees, subcontractors and agents, in accordance with Section 2(d), or (b) as directed by the Covered Entity.
- 2) **Responsibilities of Business Associate.** With regard to its use and/or disclosure of protected health information, the Business Associate hereby agrees to do the following:
  - a) Use and/or disclose the protected health information only as permitted or required by this Agreement or as otherwise required by law;
  - b) Report to the designated privacy officer of the Covered Entity, in writing, any "security incident", as defined in the above referenced HIPAA Security Regulations, and any use and/or disclosure of the protected health information that is not permitted or required by this Agreement of which Business Associate becomes aware within fifteen (15) days of the Business Associate's discovery of security incident or unauthorized use and/or disclosure;
  - c) Implement appropriate physical, technical, and administrative measures to protect the confidentiality, integrity, and availability of the protected health information which it creates, transmits, stores or receives;
  - d) Require all of its employees, representatives, subcontractors or agents that receive or use or have access to protected health information under this Agreement to agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of protected health information that apply herein, including the obligation to return or destroy the protected health information as provided under (h) of this section.
  - e) Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Secretary of HHS for purposes of determining the Covered Entity's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
  - f) Within fifteen (15) days of receiving a written request from the Covered Entity, provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by the subject individual for amendment and accounting purposes of the disclosures of the individual's protected health information in accordance with 45 C.F.R. §164.526 and §164.528;
  - g) Return to the Covered Entity or destroy, as requested by the Covered Entity, within 30 days of the termination of this Agreement, the protected health information in Business Associate's possession and retain no copies or back-up tapes. If this is not feasible, Business Associate will limit further uses and disclosures to the reason that return/destruction is not feasible, and to extend the protections in this agreement for as long as the protected health information is in its possession.
- 3) **Mutual Representation and Warranty.** Each party represents and warrants to the other party that all of its employees, agents, representatives and members of its work force, whose services may be used to fulfill obligations under this Agreement, are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to fully comply with all provisions of this Agreement.
- 4) **Term and Termination.**
  - a) **Term.** This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, unless terminated as provided herein or by mutual agreement of the parties.
  - b) **Termination.** As provided for under 45 C.F.R. §164.504(e)(2)(iii), the Covered Entity may immediately terminate this Agreement and any related agreement if it determines that the Business Associate has breached a material provision of this Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with 30 days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of the Agreement. If termination is not feasible, the Covered



## SAYAH PERFORMANCE MEASUREMENT TOOL

Entity shall report the breach to the Secretary of HHS. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the Service Agreement.

- 5) **Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2(g) and 8 shall survive the termination of this Agreement indefinitely.
- 6) **Amendment.** This Agreement may not be modified or amended, except in writing as agreed to by each party.
- 7) **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.

## Attachment A

Business Associate is authorized to use protected health information for the purposes of supporting Covered Entity as provided for in the License Agreement. This includes providing training services, providing technical support for software operation. Business Associate may use protected health information as necessary for the proper management and administration of its business.