

## Practice Growth Dashboard Addendum (“Addendum”)

In addition to the terms and conditions within the Software License Agreement between your practice (“Customer”, “you” and “your”) and eClinicalWorks, LLC (“eClinicalWorks”) that govern your use of the eClinicalWorks electronic medical record software (“Software”), you agree to the terms and conditions set forth in this Addendum with respect to your use of the Practice Growth Dashboard (“Dashboard”). You also understand and agree that you are binding your Customer to the terms and conditions because, as an administrator to the Software account, you have the authority to “opt in” on your Customer’s behalf.

Customer Data	“Customer Data” shall mean the aggregated, deidentified KPI data and information that is compiled or passes through the Dashboard. Customer hereby grants to eClinicalWorks a perpetual, royalty-free, sublicensable, irrevocable, and otherwise unlimited right and license to use the Customer Data in a de-identified and/or aggregate format for data benchmarking and data analysis services.
Key Performance Indicators (KPI)	<p>Customer shall provide Customer Data relating to the below KPI’s on a monthly basis:</p> <ul style="list-style-type: none"> <li>● <b>Cancelled Visits Percentage</b> - Office visits with cancelled status / expected office visits</li> <li>● <b>No Show Percentage</b> - Office enc with in no show status / expected office visits</li> <li>● <b>Upfront Collections Percentage</b> - Upfront collected visits / billable visits</li> <li>● <b>Note Completion Lag</b>- Average time it takes from visit date to lock date for billable office visits</li> <li>● <b>Template Usage Percentage</b> - billable office with at least one template merged into progress note / billable visits</li> <li>● <b>Days in Accounts Receivable</b> - Balance for claims in the last 90 days / average daily charges for claims created in last 90 days</li> <li>● <b>Claims Percentage 120+</b> - outstanding claims 120+ days in Accounts Receivable / Total outstanding claims</li> <li>● <b>Clean Claim Percentage</b> - All claims submitted that went directly from PEN (pending) to CMC (ready to submit (electronic)) status / All claims submitted</li> <li>● <b>Claim Creation Lag</b> - number of days between appointment date and claim creation date for claims created in month</li> <li>● <b>Claim Submission Lag</b> - number of days between claim creation and submission for claims submitted in month</li> </ul> <p>eClinicalWorks may add or remove certain KPIs on a regular basis as needed.</p>
Data Sharing	For Customer to participate in this Dashboard, Customer must agree to share their own Customer Data. Customer agrees to share Customer Data for calculating the eCW Benchmark.
eCW Benchmark	Under the eCW Benchmark, Customer Data will be de-identified and aggregated with other eClinicalWorks clients’ data for benchmarking purposes.
Pricing	There is no charge for participating in eClinicalWorks’ Practice Growth Dashboard during the Initial Term. Participation is required to obtain access to the Practice Growth Dashboard.

Term	This Addendum shall become effective upon your access or use of the Dashboard and shall continue for an initial term of one (1) year (“Initial Term”) Thereafter, this Addendum shall automatically renew for successive one-year terms (“Renewal Term”). The Initial Term and any Renewal Terms shall collectively be referred to as “Term”.
Cancellation	Either party may cancel this Addendum at any time upon providing thirty (30) days’ notice to the other party.  If Customer cancels the Software License Agreement, Customer’s data will be removed from the Dashboard. Additionally, Customer understands that if Customer decides to no longer share Customer Data, this Addendum shall automatically terminate.
Disclaimers	In addition to the disclaimers in Section VI below, Customer acknowledges that the Dashboard and any reports generated therefrom are provided without warranties of any kind. Customer also acknowledges that eClinicalWorks is unable to verify the accuracy of third-party data included in the Dashboard. Customer hereby releases and discharges eClinicalWorks from any and all liability associated with Customer’s use of the Dashboard, its content and any associated reporting. Notwithstanding anything to the contrary contained herein, Customer on behalf of itself, and its providers and Customer personnel acknowledge that the Dashboard is not intended as a substitute for professional medical judgment and eClinicalWorks shall have no indemnification or liability obligations related to any failure to exercise such professional judgment.

**I. Terms and Conditions**

BY ACCESSING OR USING THE DASHBOARD, YOU AGREE TO THESE TERMS. IF YOU DO NOT AGREE TO BE SO BOUND, YOU ARE NOT AUTHORIZED TO ACCESS OR USE THE DASHBOARD.

**II. Ownership of and License to the Dashboard**

**a. License.** Subject to these terms and conditions, eClinicalWorks grants and Customer accepts a nonexclusive, nontransferable, revocable license to access and use the Dashboard during the Term.

**b. Access.** The Dashboard may only be accessed and used by Customer, its providers, and provider’s personnel when reviewing alongside eClinicalWorks.

**c. Modifications.** Customer may not make any modifications or enhancements to the Dashboard without eClinicalWorks prior written consent. eClinicalWorks may, in its sole and absolute discretion and without any liability, change, discontinue, make improvements to, modify, or suspend, any aspect or all of the Dashboard temporarily or permanently, at any time and for any reason without prior notice.

**d. Proper Use of the Dashboard.** The Customer acknowledges that the continued integrity of the Dashboard and eClinicalWorks performance of its obligations hereunder are dependent upon Customer’s use of the Dashboard in accordance with this Addendum.

**e. Ownership and Proprietary Rights.** eClinicalWorks or its licensor(s) retain all right, title, and interest in and to Dashboard and any updates, changes, derivative works, enhancements, and/or modifications thereto. These terms do not grant Customer any IP Rights in the Dashboard or any of its components. As between eClinicalWorks and Customer, eClinicalWorks and/or its licensor(s) are, and will be, the owner of (inclusive of all IP Rights therein) (i) the services, (ii) the Dashboard, (iii) any other templates, ideas, methodologies, designs, materials, or technology developed or provided by eClinicalWorks. Customer may not attempt to sell, sublicense, lease, permit, rent or transfer in any way whatsoever the Dashboard. Customer agrees that it will not, at any time, without the prior written consent of eClinicalWorks, decompile, disassemble or reverse engineer any software included within the Dashboard, including without limitation the applications, to develop functionally similar software or permit any third party to do any of the foregoing. Customer agrees to not grant access to any third party or allow any third party to use the Dashboard for any purpose without the prior written consent of eClinicalWorks. “IP Rights” means all rights, title and interests, throughout the world, in or to: (i) patents, patent applications and patentable subject matter, whether or not the subject of an application, (ii) trademarks, service marks, trade names, trade dress and other

designators of origin, registered or unregistered and the goodwill associated therewith, (iii) moral rights, copyrights, copyrightable subject matter or protectable designs, registered or unregistered, (iv) software, databases, documentation and other technology, (v) trade secrets and confidential information, (vi) Internet domain names, uniform resource locators, social media accounts and e-mail addresses, (vii) rights in semiconductor topographies (mask works), registered or unregistered, (viii) know-how, and (ix) all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, contract, license or otherwise, including the right to sue and receive damages for infringement, misappropriation or violation of any of the foregoing.

**a. Feedback.** To the extent that Customer provides any comments, instructions, suggestions, information, and/or other feedback to eClinicalWorks regarding the Dashboard (collectively, "Feedback"), Customer hereby assigns to eClinicalWorks all right, title, and interest including, without limitation, all IP Rights, in and to such Feedback. All Feedback shall be considered the Confidential Information of eClinicalWorks.

### III. Availability

eClinicalWorks uses the means it believes are reasonable to provide access to the Dashboard 24 hours a day, 7 days a week, except in the case of scheduled maintenance or events reasonably beyond eClinicalWorks's control (such as natural disasters). eClinicalWorks shall not be liable for any failure, unavailability, or deficiency in the performance of the Dashboard during an Internet outage, scheduled maintenance, or any event reasonably beyond eClinicalWorks's control.

Customer acknowledges that data conversion and transmission is subject to the likelihood of human and machine errors, omissions, delays and losses, including inadvertent loss of data or damage to media, that may give rise to loss or damage. eClinicalWorks shall not be liable for any such errors, omissions, delays, or losses.

### IV. Compliance with Laws; Transmission of Data

Customer understands and agrees that this Addendum may be amended from time to time, if necessary, to comply with applicable law.

When Customer uses the Dashboard to upload, transmit, or receive Customer Data, Customer agrees that, to the extent applicable, Customer shall comply with all applicable state and federal laws including, but not limited to, the Privacy Laws, as well as ethical and licensure requirements of the medical profession that may limit Customer's ability to transmit certain information to third parties. Customer represents and warrants that, at all times, Customer will comply with all laws directly or indirectly applicable to Customer that may now or hereafter govern the gathering, use, transmission, processing, receipt, reporting, disclosure, maintenance, and storage of PHI, and use Customer's best efforts to cause all persons or entities under Customer's direction or control to comply with such laws. Customer is, at all times during Customer's use of the Dashboard, solely responsible for obtaining and maintaining all patient consents, if applicable, and all other legally necessary consents or permissions required or advisable to disclose, process, retrieve, transmit, receive, and view any PHI that Customer chooses to transmit, store, view, or receive in connection with the Dashboard. Customer agrees that eClinicalWorks, and all other persons or entities involved in the operation of the Dashboard, have the right to monitor, retrieve, store, review, and use PHI, if applicable, in connection with the transmission of any PHI.

### V. Customer's Representations, Warranties, and Indemnification to eClinicalWorks

Customer represent, warrant, and covenant to eClinicalWorks that: (i) Customer has the full power and authority to enter into and perform its obligations under this Addendum; (ii) Customer's assent to, and performance of, Customer's obligations under this Addendum does not constitute a breach of or conflict with any other agreement or arrangement by which Customer is bound, or any applicable federal or state laws; (iii) Customer is able to form a legally binding contract, and this Addendum constitute legal, valid, and binding obligations on Customer, enforceable in accordance with their terms; (iv) Customer will not infringe the patent, copyright, trademark, trade secret, right of privacy, right of publicity, or other intellectual property or proprietary right of eClinicalWorks or any third party in Customer's use of the Services or any Affiliated Services; (v) Customer has provided complete, truthful, and accurate information about Customer for purposes of using the Dashboard; (vi) Customer is not using, and will not use, the Dashboard, or any information contained therein for any improper or unlawful purpose; and

(vii) Customer will comply with all applicable federal and state laws in Customer's use of the Dashboard.

Customer agrees to indemnify and hold eClinicalWorks and its owners, employees, representatives, agents, attorneys, affiliates, directors, officers, members, and managers ("Indemnified Parties") harmless from any and all damages, losses, costs, or expenses (including without limitation, attorney's fees and costs) incurred in connection with any third party claim, demand or action ("Claim") brought or asserted against any of the Indemnified Parties: (i) alleging facts or circumstances that would constitute a breach by Customer of any provision of these terms and conditions; (ii) arising from, related to, or connected with Customer's use of the Dashboard, and/or their Content; or (iii) arising from, related to, or connected with Customer's non-compliance with any applicable laws.

#### VI. Disclaimers, Exclusions and Limitations

As used below in this section, "eCW" refers to eClinicalWorks, LLC, and any of its owners, employees, representatives, agents, attorneys, affiliates, directors, and officers.

#### **DISCLAIMER OF WARRANTIES**

THE DASHBOARD, ITS CONTENT AND ANY INFORMATION INCLUDED ON OR PROVIDED THROUGH THE DASHBOARD ARE PRESENTED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. ECW DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED, OR STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND LACK OF NEGLIGENCE OR WORKMANLIKE EFFORT.

WITHOUT LIMITING THE FOREGOING PROVISIONS:

(1) CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR THE USE OF, AND RESULTS OBTAINED FROM, THE DASHBOARD;

(2) ECW MAKES NO REPRESENTATION OR WARRANTY THAT THE DASHOARD AND ANY CONTENT THEREIN WILL BE ERROR-FREE, SECURE, VIRUS FREE, OR FREE FROM INTERRUPTIONS, DEFECTS OR OTHER FAILURES OR HARMFUL COMPONENTS;

(3) ECW MAKES NO REPRESENTATION OR WARRANTY THAT THE INFORMATION OBTAINED FROM THIRD PARTY SOURCES USED ON OR WITHIN THE DASHBOARD OR RECEIVED IN CONNECTION WITH CONVERTING OR TRANSMITTING ANY DATA RECEIVED IN DIFFERENT FORMATS IS ACCURATE, TIMELY, OR ERROR FREE, AND ECW IS NOT RESPONSIBLE IN ANY WAY FOR THE INFORMATION OBTAINED FROM SUCH SOURCES;

SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

#### **LIMITATION OF LIABILITY AND EXCLUSION OF DAMAGES**

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY SHALL ECW BE LIABLE TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES OF ANY CHARACTER WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OR INABILITY TO USE THE DASHBOARD, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS ADDENDUM, EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY BY ECW EVEN IF ECW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## VII. Violation of This Addendum

Customer agrees that eClinicalWorks may, in its sole discretion and without prior notice, terminate Customer's access to the Dashboard if eClinicalWorks determines in its sole discretion that Customer has violated these terms.

If eClinicalWorks takes legal action against Customer as a result of Customer's violation of these terms, eClinicalWorks will be entitled to recover from Customer, and Customer agrees to pay, all reasonable attorney's fees and costs of such action, in addition to any other relief granted to eClinicalWorks. Customer agrees that eClinicalWorks will not be liable to Customer or to any third party for termination of Customer's access to the Dashboard as a result of any violation of these terms.

## VIII. Governing Law and Arbitration

This Addendum shall be governed, construed and applied in all respects by the laws of the Commonwealth of Massachusetts, without regard to any provision governing conflicts of law.

Any and all controversies, claims, or disputes arising out of, relating to, or connected with this Addendum or Customer's use of the Dashboard shall be referred to and settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with the provisions set forth under the AAA's Commercial Arbitration Rules and any other applicable rules and procedures ("**Rules**") by a panel of three arbitrators appointed in compliance with the Rules. This includes all disputes over arbitrability.

The Parties to this Agreement further acknowledge and agree that:

- (a) the location of the arbitration, including the location of all arbitration hearings, shall be Boston, Massachusetts;
- (b) the arbitral award shall address the costs and expenses of arbitration and all matters related thereto, including, the allocation of same between the parties;
- (c) the award of the arbitrators shall be final and binding upon the parties; and
- (d) the parties submit to the jurisdiction of the federal courts of Massachusetts for the purposes of ratifying any award made pursuant to arbitration proceedings conducted in accordance with this clause and/or may enforce the award through such courts.

By using the Dashboard, Customer expressly waives Customer's right to pursue all controversies, claims, or disputes in court and instead must submit any such controversies, claims, or disputes to arbitration as described above.

## IX. Miscellaneous

If any provision of this Addendum is ruled by a court or other tribunal of competent jurisdiction to be void or unenforceable, such provision(s) shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best furthers the intent of this Addendum, with all remaining provisions remaining in full force and effect.

Customer may enter into a business associate agreement with eClinicalWorks (the "Business Associate Agreement"). Notwithstanding the foregoing, Customer understands that Customer's use of the Dashboard requires eClinicalWorks to deidentify and aggregate Customer Data and that the deidentified, aggregated Customer Data becomes part of the eCW Benchmark, along with similar data from other practices. Therefore, by entering into this Addendum, Customer agrees to permit eClinicalWorks to use and disclose deidentified aggregated Customer Data to operate the Dashboard, and for other internal purposes. In the event Customer's Business Associate Agreement conflicts with this particular use or disclosure, this Addendum shall prevail. All other terms and conditions within the Business Associate Agreement shall remain unchanged.

The Software License Agreement, this Addendum and the Business Associate Agreement constitute the entire agreement between Customer and eClinicalWorks with regard to Customer's access and use of the Dashboard. No Customer modifications to this Addendum shall be accepted by eClinicalWorks, and eClinicalWorks rejects all such modifications.

eClinicalWorks's failure or delay to insist on or enforce strict performance of this Addendum shall not be construed

as a waiver of any provision or any right that eClinicalWorks has to enforce this Addendum. This Addendum does not confer any rights or remedies on any third parties.

IN WITNESS WHEREOF, eClinicalWorks and Customer have executed the Addendum on the date of the last signature below.

**ECLINICALWORKS, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer Name:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_