DATABANK CLOUD TERMS AND CONDITIONS

This DataBank Cloud Terms and Conditions ("Agreement") is entered into with Customer in accordance with the DataBank Cloud Subscription Agreement. By accessing, receiving, and/or using the Services, you agree, without limitation or qualification, to be bound by and to comply with this Agreement and the DataBank Cloud Subscription Agreement. If You do not agree to be bound by this Agreement (and any applicable Additional Terms), then you are not authorized to use the applicable Services and must immediately discontinue use and permanently delete all software components in your possession that were provided by DataBank in relation to the Services.

RECITALS

A. DataBank developed, licenses, and markets a solution which includes a Host Web Site, Network, Software, Third Party Software, User Testing Environment (if applicable), and Hosting Services provided, collectively, by DataBank under this Agreement (hereinafter, "Cloud Solution"); and

B. Customer wishes to purchase, and DataBank is willing to provide the Cloud Solution.

DataBank and Customer, in consideration of mutual promises set forth herein, agree as follows:

1. DEFINED TERMS

Certain capitalized terms used in this Agreement have the meanings set forth in Exhibit A attached to this Agreement.

2. PURCHASE ORDERS

Customer shall submit written purchase orders to DataBank for the purchase of the Cloud Solution in accordance with the DataBank Cloud Subscription Agreement. Any future purchase order submitted by Customer is subject to acceptance or rejection by DataBank. Increases or additional services can be added by issuing a PO for such services and all additional services will be subject to the terms and conditions of the DataBank Cloud Subscription Agreement.

3. PRICES, INVOICING AND PAYMENT

3.1 Prices and Invoicing.

(a) Initial Setup Fees. DataBank will invoice Customer for Initial Setup Fees and any related purchase order(s) following the Effective Date.

(b) Cloud Subscription Fees. Unless otherwise mutually agreed by the parties in writing, DataBank will invoice Customer for Subscription Fees in accordance with the Purchasing Table in the Cloud Subscription Agreement. If additional usage fees are incurred, they shall be invoiced in the arrears and invoiced the following month. The Customer will be invoiced starting at the time the cloud platform has been provisioned for use unless otherwise stated in the Cloud Subscription Agreement. If at any time Customer purchases additional components for the Cloud Solution, then for the balance of the then-current term, Customer will pay additional Subscription Fees in such amounts as are mutually agreed to by the parties. DataBank will increase the Subscription Fees for any renewal period in accordance with its policies and or a new Cloud Subscription Agreement.

(c) Consumption Fees. DataBank will invoice Customer for any Consumption Fees, monthly in arrears, promptly upon the end of the month to which such Consumption Fees relate. Consumption Fees

will be due for a month if at any time during such month the amount of Consumption fees exceeds Customer's then-current incorporated fees.

        (d)   <u>Other Fees</u>. If Customer procures and DataBank provides any other services or deliverables in connection with the Cloud Solution that are not covered by the fees and charges described in paragraphs (a) - (c) above, DataBank will invoice Customer for such other fees or charges based upon the pricing that the parties have mutually agreed upon in connection with such other services or deliverables.

        (e)   <u>Receipt of Invoices; Correction</u>. All invoices shall be sent electronically by DataBank to Customer to the attention of "Accounts Payable," or to such other person or department as Customer may specify from time to time by written notice to DataBank. In the event any invoice contains an under billing error which is discovered by DataBank, DataBank may issue a new invoice to correct the error.

3.2   <u>Payment of Invoices</u>. Subject to Section 3.3 below, Customer shall pay any invoice issued by DataBank under or in connection with this Agreement in full to DataBank net thirty (30) days from the date of invoice.

3.3   <u>Resolution of Invoice Disputes</u>. If Customer believes that an invoice contains an error then, prior to the due date for payment of such invoice, Customer shall promptly notify DataBank in writing that it disputes all or any portion of an amount invoiced. Any amounts not timely disputed in accordance with the preceding sentence shall be deemed to be undisputed and shall be payable in accordance with Section 3.2. With respect to any amounts that are timely disputed, the parties will proceed with the dispute resolution provision set forth below in this Agreement.

3.4   <u>Certain Remedies for Non-Payment or for Late Payment</u>. At the election of DataBank, any past due amounts under any DataBank invoice shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that such past due amounts and such accrued interest are paid in full. In the event of any default by Customer in the payment of any amounts invoiced by DataBank, which default continues unremedied for at least thirty (30) calendar days after the due date of such payment, DataBank shall have the right to suspend or cease Customer's right to use the Cloud Solution, unless and until such default shall have been cured.

3.5   <u>Taxes and Governmental Charges</u>. All payments under this Agreement are exclusive of all applicable taxes and governmental charges (such as duties), all of which shall be paid by Customer (other than taxes on DataBank's income). In the event Customer is required by law to withhold taxes, Customer agrees to furnish DataBank all required receipts and documentation substantiating such payment. If DataBank is required by law to remit any tax or governmental charge on behalf of or for the account of Customer, Customer agrees to reimburse DataBank within thirty (30) days after DataBank notifies Customer in writing of such remittance. Customer agrees to provide DataBank with valid tax exemption certificates in advance of any remittance otherwise required to be made by DataBank on behalf of or for the account of Customer, where such certificates are applicable.

3.6   <u>Rate Increases.</u> Rates for Services, Maintenance and Support provided under this Agreement may be changed by DataBank upon thirty (30) days' prior written notice by the greater of 2% or the U.S. Dept. of Labor, Consumer Price Increase, All Urban Consumers (CPI), as compared to the CPI for the previous 12-month period for any subscription renewal.

3.7   <u>U.S. Dollars</u>. All fees and charges under this Agreement shall be determined, invoiced and paid in U.S. dollars.

4.   **OWNERSHIP OF CLOUD SOLUTION COMPONENTS**

        DataBank and its suppliers own the Software, Third Party Software and any and all computer hardware and telecommunications or other equipment and computer software, including the Host Web Site and the Network, and including, without limitation, any and all worldwide copyrights, patents, trade secrets,

trademarks and proprietary and confidential information rights in or associated with the components of the Cloud Solution. The Software, Third Party Software and other software components of the Cloud Solution are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software, Third Party Software, Host Web Site, Network or other hardware or software components of the Cloud Solution are transferred to Customer. Customer agrees that nothing in this Agreement or associated documents gives it any right, title or interest in or to any of the foregoing, except for the limited express rights granted in this Agreement. THIS AGREEMENT IS NOT A WORK-FOR-HIRE AGREEMENT. At no time will Customer file or obtain any lien or security interest in or on any components of the Cloud Solution. Customer owns the Customer Data.

5.   INDEMNIFICATION

5.2   <u>DataBank Indemnification</u>. DataBank agrees to indemnify, defend, and hold harmless Customer and its officers, directors, shareholders, employees, agents, successors, and assigns against all costs, expenses, claims, liabilities, demands, causes of action liability and expense, including reasonable attorneys' fees, arising from or in connection with any third party claim, action or proceeding instituted against Customer based upon any infringement or misappropriation by the Cloud Solution of any patent, registered copyright or registered trademark of a third party that is enforceable in the United States, provided that DataBank: (a) is notified promptly after Customer receives notice of such claim; (b) is solely in charge of the defense of and any settlement negotiations with respect to such claim, provided, that DataBank will not settle any such claim without the prior written consent of Customer if such settlement contains a stipulation to or admission or acknowledgement of any liability or wrongdoing on the part of or otherwise requires payment by Customer; (c) receives Customer's reasonable cooperation in the defense or settlement of such claim; and (d) has the right, upon either the occurrence of or the likelihood (in the opinion of DataBank) of the occurrence of a finding of infringement or misappropriation, either to procure for Customer the right to continue use of the Cloud Solution, or to replace the relevant portions of the Cloud Solution with other equivalent, non-infringing portions. If DataBank is unable to accomplish either of the options set forth in the preceding sentence, DataBank shall terminate this Agreement upon thirty (30) days advance written notice to Customer and cause to be refunded to Customer any hosting fees for use of the Cloud Solution paid for any unused months. Notwithstanding anything to the contrary, DataBank shall have no obligation to Customer to defend or satisfy any claims made against Customer to the extent that such claims arise from: (1) any Customer Data; (2) use of the Cloud Solution other than as expressly permitted by this Agreement; (3) the combination of the Cloud Solution or any component thereof with any product not furnished by DataBank; or (4) the modification or addition of any component of the Cloud Solution, other than by DataBank. THIS SECTION 5.2 STATES DATABANK'S ENTIRE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ANY ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY BY THE CLOUD SOLUTION OR ANY COMPONENT THEREOF.

5.3   <u>Customer Indemnification</u>. Customer agrees to indemnify, defend, and hold harmless DataBank and its officers, directors, shareholders, employees, agents, successors and assigns against all costs and expenses, including reasonable attorney's fees, associated with the defense or settlement of any claim arising out of, related to, or alleging: (a) Customer's (mis)use of the Cloud Solution, (b) the breach of any of its obligations under this Agreement, or (c) any negligent or more culpable act or omission of Customer or its employees, agents, or representatives.

6.   CERTAIN RESPONSIBILITIES AND OBLIGATIONS OF CUSTOMER

6.1   Except as otherwise expressly permitted under the terms of this Agreement, Customer will not permit or authorize any person, legal entity, or other third party to use the Cloud Solution. Further, Customer will comply with the "DataBank's Cloud Acceptable Use Policy", which can be found at: www.databankimx.com/legal

6.2   The Cloud Solution is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted. The Cloud Solution is not designed or intended for use in any situation where failure or fault of any kind of the Cloud Solution could lead to death or serious bodily injury to any person, or to severe

physical or environmental damage ("High Risk Use"). Customer is not licensed to use the Cloud Solution in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of the Cloud Solution for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non- controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function. Customer agrees not to use, distribute or sublicense the use of the Cloud Solution in, or in connection with, any High Risk Use." Customer agrees to indemnify and hold harmless DataBank from any third-party claim arising out of Customer's use of the Cloud Solution in connection with any High Risk Use.

6.3   Customer is responsible for obtaining and maintaining all software, hardware (including without limitation network systems), telephonic or other communications circuits, and Internet Service DataBank relationships that are necessary or appropriate for Customer to properly access and use the Cloud Solution. DataBank shall have no responsibility or liability under this Agreement for any unavailability or failure of, or nonconformity or defect in, the Cloud Solution that is caused by or related in any manner to any failure of Customer to obtain and maintain all such software, hardware, equipment, connectivity and relationships.

6.4   Customer acknowledges that DataBank's Cloud Solution Platform utilizes Amazon Web Services (AWS) as the hosting platform for DataBank's offerings. The AWS Service Level Agreement can be found at: https://aws.amazon.com/agreement. Customer acknowledges that, with respect to the AWS Cloud Solution Platform, DataBank will not provide any service level commitments beyond what is provided for by AWS in the AWS Service Level Agreement.

7.   CONFIDENTIAL INFORMATION

7.1   "Confidential Information" shall mean Customer Data and such information that is marked "Proprietary" or "Confidential," that is known by the recipient to be confidential, or that is of such a nature as customarily would be confidential between business parties, except as provided in the next sentence. Confidential Information shall not include information that: (a) is or becomes generally known to the public without breach of this Agreement by the recipient, or (b) is demonstrated by the recipient to have been lawfully in the recipient's possession prior to its disclosure by the disclosing party, or (c) is received by the recipient from a third party that is not bound by restrictions, obligations or duties of non-disclosure to the disclosing party, or (d) is demonstrated by recipient to have been independently developed by recipient without breach of its obligations.

7.2   Each party agrees that, with respect to the Confidential Information of the other party, such party as a recipient shall at all times maintain the confidentiality of the other party's Confidential Information, using the same degree of care that such party uses to protect its own confidential information, but in any event not less than reasonable care; and shall not use (except in performance of this Agreement) or disclose to any third party any such Confidential Information, except as may be required by law or court order. The receiving party shall notify the disclosing party prior to making any disclosures compelled by court order or law. Each party shall be liable and responsible for any breach of this Section 7 committed by any of such party's employees, agents, consultants, contractors or representatives.

7.3   Notwithstanding anything to the contrary in this Agreement, DataBank may (i) compile statistical and other information related to the performance, operation and use of the DataBank Cloud and Subscription, Software Support, Services and/or other transaction or usage data, and (ii) use data from the Software, Software Support, Platform, Services and/or other transaction and usage data in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Data Analyses"). DataBank may make Data Analyses publicly available; however, such Data Analyses will anonymize Customer's identity and shall not incorporate Customer's transaction or usage data or other Confidential Information in a form that could

serve to identify Customer or any Customer end user. DataBank retains all intellectual property rights in Data Analyses.

8.   TERM AND TERMINATION; CERTAIN EFFECTS OF TERMINATION

8.1   <u>Termination</u>.

(a) <u>Termination for Cause</u>. Each party will be entitled to give written notice to the other party of any material breach or other material failure by such other party to comply with any term or condition of this Agreement (including for purposes hereof any non-payment of amounts due under this Agreement), specifying the nature of such breach or non-compliance and requiring such other party to cure the breach or non-compliance. If such other party has not cured or commenced the necessary action to cure the breach or non-compliance within fifteen (15) calendar days after receipt of such written notice, this Agreement will automatically and immediately terminate as of the close of business, 5:00PM, US Eastern Time, on such 15th day.

(b) <u>Termination Without Cause.</u> Customer may terminate this Agreement at any time without cause prior to the end of the Agreement's current Term, but DataBank will not refund to Customer any hosting fees for use of the Cloud Solution paid for any unused months or any other amounts paid by Customer.

(c) <u>Certain Effects of Termination</u> This Agreement shall remain in force and payable during the Hosting Agreement period ("Initial Term"). Upon 30 days' written notice to DataBank, Customer may terminate this Agreement at any time without cause prior to the Agreement's Expiration Date but no refunds for amounts paid or credits against future payments due will be issued by DataBank. All future payments will continue to be payable in accordance with the agreed upon Subscription Fee schedule.

(d) <u>Violation of Laws</u>.   If, in the reasonable opinion of Customer or DataBank, the compliance by either party with the terms of this Agreement will be in violation of any law or regulation implemented or modified after the Effective Date of this Agreement, Customer or DataBank, as the case may be, may terminate this Agreement upon thirty (30) days written notice to the other party.

(e) <u>Cessation of Use.</u> Immediately upon any termination or expiration of this Agreement, Customer shall cease any and all uses of the Cloud Solution.

(f) <u>Return of Customer Data and Deletion.</u> Upon termination or expiration of this Agreement and written request, sent to contractcompliance@databankimx.com and made within thirty (30) days after the effective date of any such termination or expiration, DataBank will either: (1) return Customer Data to Customer by providing to Customer the Customer Data on encrypted hard drive(s) or other similar media and an export file containing the relevant keyword values and related file locations for the Customer Data or (2) make available to Customer the Customer Data for extraction via SFTP, both of which will be billed to Customer at its sole expense. DataBank will not have any obligation to pay for the return of any data. DataBank will work with Customer on determining the extraction method most suitable to meet Customer's requirements. Customer acknowledges and agrees that thirty (30) days after DataBank has sent or made available to Customer the Customer Data, DataBank shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all such Customer Data from all of DataBank's datacenters, including all backup copies. If Customer does not provide proper notice as prescribed above, DataBank will have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data from all of DataBank's datacenters, including all backup copies.

9.   LIMITED WARRANTY; WARRANTY DISCLAIMER

9.1   For a period of ninety (90) days from the Effective Date, DataBank warrants to Customer that the Cloud Solution, when properly used, will operate substantially in accordance with the Documentation. Provided that Customer notifies DataBank in writing of the non-conformity within the warranty period, DataBank will either: (a) correct the non-conformity, which may include the delivery of a commercially reasonable workaround for the non-conformity; or (b) upon determining that correction of the non-conformity is not commercially practicable, terminate this Agreement, in which event DataBank will refund all fees related to the Cloud Solution that have been paid by Customer prior to the time of such termination. The terms of this limited warranty shall not apply to, and DataBank shall have no liability for any non-conformity related to, the Cloud Solution if: (1) any component of the Cloud Solution has been modified, misused or abused by Customer or a third party or (2) any such non-conformity arises from or is related to problems within or impacting Customer's computing environment, including any Customer third party software applications, hardware, network or internet connectivity. DataBank does not warrant that the Cloud Solution will meet Customer's requirements or that the operation of the Cloud Solution will be uninterrupted or error free.

9.2   Customer represents and warrants to DataBank that: (a) Customer is the legal custodian of the Customer Data and it has the right and authority to use the Cloud Solution in connection with all Customer Data and other materials hereunder; (b) Customer will use reasonable efforts to ensure that any Customer Data submitted to DataBank via electronic media will be free of viruses; and (c) anyone submitting Customer Data to DataBank for use in connection with the Cloud Solution has the legal authority to do so, either through ownership of the Customer Data or by obtaining appropriate authorizations therefor, and that submission of Customer Data does not violate any contracts, agreements, or any applicable law. Customer is responsible for all Customer Data that is submitted to DataBank for use in connection with the Cloud Solution.

9.3   EXCEPT FOR THE WARRANTIES PROVIDED BY A PARTY AS EXPRESSLY SET FORTH IN THIS SECTION 9, EACH PARTY (AND, IN THE CASE OF DATABANK, ITS SUPPLIERS) MAKE NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND UNDER THIS AGREEMENT OR OTHERWISE WITH RESPECT TO THE CLOUD SOLUTION (INCLUDING ANY HARDWARE OR SOFTWARE) OR ANY HOSTING SERVICES PROVIDED OR MADE AVAILABLE FOR USE BY DATABANK TO CUSTOMER UNDER THIS AGREEMENT; AND EACH PARTY (AND, IN THE CASE OF DATABANK, ITS SUPPLIERS) DISCLAIM AND EXCLUDE ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF TITLE, WARRANTIES AGAINST INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. DATABANK AND ITS SUPPLIERS DO NOT WARRANT THAT ANY HOSTING SERVICES OR THE CLOUD SOLUTION WILL SATISFY CUSTOMER'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR AND CUSTOMER SPECIFICALLY ASSUMES RESPONSIBILITY FOR DETERMINING IF THE HOSTING SERVICES, CLOUD SOLUTION, MAINTENANCE AND SUPPORT, AND PROFESSIONAL SERVICES WILL ACHIEVE ITS BUSINESS OBJECTIVES. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT, AND WILL NOT, RELY ON ANY ORAL OR WRITTEN REPRESENTATIONS OR WARRANTIES MADE OUTSIDE OF THIS AGREEMENT BY DATABANK OR ANY OTHER PERSON ON DATABANK'S BEHALF.

10. LIMITATIONS OF LIABILITY

IN NO EVENT SHALL DATABANK'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR IN CONNECTION WITH THE CLOUD SOLUTION EXCEED THE AMOUNT OF THE FEES AND CHARGES ACTUALLY PAID BY CUSTOMER TO DATABANK UNDER THIS AGREEMENT DURING THE PRECEDING TWELVE (12) MONTHS IN WHICH THE EVENT GIVING RISE TO SUCH LIABILITY OCCURS. IN NO EVENT WILL DATABANK OR ITS DIRECT OR INDIRECT SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR OTHER PECUNIARY LOSS INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR INFORMATION, THE COST OF RECOVERING SUCH DATA OR INFORMATION, THE COST OF SUBSTITUTE SOFTWARE, HARDWARE OR SERVICES, OR CLAIMS BY THIRD PARTIES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY USE OR INABILITY TO USE THE CLOUD SOLUTION OR HOSTING SERVICES, EVEN IF DATABANK OR SUCH SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES.

FOR CUSTOMERS THAT PROVIDE HEALTHCARE SERVICES: IF CUSTOMER USES THE CLOUD SOLUTION IN A CLINICAL SETTING, CUSTOMER ACKNOWLEDGES THAT THE CLOUD SOLUTION IS AN ADVISORY DEVICE AND IS NOT INTENDED TO SUBSTITUTE FOR THE PRIMARY DEFENSES AGAINST DEATH OR INJURY DURING MEDICAL DIAGNOSIS, TREATMENT OR SIMILAR APPLICATIONS, WHICH DEFENSES SHALL CONTINUE TO BE THE SKILL, JUDGMENT AND KNOWLEDGE OF THE CUSTOMER'S USERS OF THE CLOUD SOLUTION.

11. MISCELLANEOUS PROVISIONS

11.1   Force Majeure. Except for Customer's obligation to pay the fees to DataBank pursuant to Section 3, no failure, delay or default in performance of any obligation of a party to this Agreement (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other party) and without negligence or willful misconduct of the party otherwise chargeable with failure, delay or default. Either party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice of that fact to the other party. This Section 11.1 shall in no way limit the right of either party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a party under this Agreement is postponed or extended pursuant to this Section 11.1 for longer than ninety (90) calendar days, the other party, by written notice given during the postponement or extension, and at least thirty (30) days prior to the effective date of termination, may terminate this Agreement.

11.2   Governing Law; Dispute Resolution; Arbitration. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. If there is a dispute, claim, or disagreement arising from or relating to this Agreement or the breach thereof, the parties shall use their best efforts to settle the matter. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of thirty (30) days (or within such additional time as the parties agree), then, upon notice by either party to the other the matter shall be settled by arbitration by a mutually acceptable Arbitrator and in accordance with the Commercial Rules of the International Chamber of Commerce, and judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction. The Arbitrator shall not have the authority to award punitive damages to any injured party. The arbitration proceeding shall be conducted in English, in Delaware, or such other location as the parties agree.

11.3   Notices. Unless otherwise agreed to by the parties in a writing signed by both parties, all notices required under this Agreement shall be deemed effective when sent and made in writing by either: (a)

registered mail, certified mail, return receipt requested, or reputable, national or international overnight courier, in any such case addressed and sent to the address set forth in the first paragraph of this Agreement and to the attention of the person executing this Agreement on behalf of that party, or that person's successor, or to such other address or such other person as the party entitled to receive such notice shall have provided, in writing, to the other party in accordance herewith, or (b) via electronic transmission to contractcompliance@databankimx.com (in the case of DataBank/DataBank) or as identified in the Cloud Subscription Agreement (in the case of Customer) or to such other address as the party entitled to receive such notice shall have provided, in writing, to the other party in accordance herewith.

11.4   Interpretation. The headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of the terms "hereunder," "herein," "hereby" and similar terms refer to this Agreement.

11.5   Waiver. No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

11.6   Integration. This Agreement, including any and all attachments, exhibits, schedules and separate written agreements related to any Cloud Solution and referred to herein or therein, set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them on the same subject matter. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided in this Agreement. This Agreement may only be modified by a written document signed by duly authorized representatives of the parties. This Agreement shall not be supplemented or modified by any course of performance, course of dealing or trade usage. Customer and DataBank specifically acknowledge and agree that any other terms varying from or adding to the terms of this Agreement, whether contained in any purchase order or other electronic, written or oral communication made from Customer to DataBank are rejected and shall be null and void and of no force or effect, unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document.

11.7   Binding Agreement and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.   Neither party may assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the other. Any change in control of a party resulting from an acquisition of stock, a merger or otherwise (whether by contract or by operation of law or otherwise) shall constitute an assignment under the terms of this provision; however, in the event of such a change in control, consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective permitted successors and permitted assigns. Any assignment made without compliance with the provisions of this Section 12.7 shall be null and void and of no force or effect.

11.8   Severability. In the event that any term or provision of this Agreement is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this Agreement.

11.9   Injunctive Relief. The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information and intellectual property rights may not be adequate for DataBank's protection and, accordingly, DataBank shall have the right to obtain, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.

11.10   Relationship of the Parties. The relationship between DataBank and Customer established by this Agreement is that of an independent contractor. Nothing in this Agreement shall be construed to give either party the power or authority to act on behalf of the other party.

11.11   Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto, any rights or remedies by reason of this Agreement; provided, however, that third party suppliers of software products bundled with the Cloud Solution and Software are third party beneficiaries to this Agreement as it applies to their respective products.

11.12   Entire Agreement. This Agreement and its exhibits or attachments constitutes the entire understanding and contract between the parties and supersedes all prior and contemporaneous, oral, or written representations, communications, understandings, and agreements between the parties with respect to the subject matter hereof. The parties acknowledge and agree that neither of the parties are entering into this Agreement based on any representations or promises not expressly contained herein. This Agreement may not be modified or amended, except by in writing signed by both parties.

11.13   User Testing Environment. Customer shall not use/store any data in the Testing Environment that is actual data or data containing protected information. DataBank has no liability regarding the protection or backup of any data in the Testing Environment.

EXHIBIT A

CERTAIN DEFINED TERMS

"Amazon Web Services (AWS) Service Level Agreement" means the latest version of the manual describing the Service Classes, as posted by DataBank from time to time on a website designated by AWS.

"Customer Data" means any and all of Customer's data and information stored within the Cloud Solution.

"Documentation" means the "Help Files" included in the Software which relate to the functional, operational or performance characteristics of the Software.

"Host Web Site" means the web site Cloud by DataBank as part of the Cloud Solution on a web server included in the Network, through which Customer will access the Software and Customer Data stored using the Software.

"Cloud Services" means the standard hosting services, as described in the Process Manual, and any Optional Hosting Services included in the Cloud Solution.

"Cloud Solution Deployment Date" means the date on which DataBank sends Customer an e-mail informing that the Cloud Solution is available for configuration.

"Network" means the computers and peripheral storage devices, switches, firewalls, routers and other network devices provided by DataBank as part of the Cloud Solution.

"Optional Cloud Services" means optional services described in the Process Manual which DataBank offers as Hosting Services, but which are not included in the standard Hosting Services.

"Process Manual" means the latest version of the manual describing the Hosting Services, the Network and certain other components of the Cloud Solution, including the attestations, certification documents and assistance with compliance and security testing DataBank agrees to provide, based upon the Service Class selected by Customer, as posted by DataBank from time to time on a website designated by DataBank (and referred to in Exhibit B).

"Service Class" means the service level commitment included as part of Standard Hosting Services, as described in the AWS Service Level Agreement, and purchased by Customer as part of the Cloud Solution.

"Software" means DataBank's proprietary software products included from time to time in the Cloud Solution, including third party software bundled by DataBank together with DataBank's proprietary software products as a unified product.

"Third Party Software" means all third party software products (other than third party software products bundled by DataBank as a part of the Software) licensed by DataBank and sublicensed through this Agreement by DataBank to Customer as part of the Cloud Solution.

"User Testing Environment" means a separate instance of the Hosting Environment for Customer, for use by Customer solely in a non-production environment for the limited purpose of functional and performance testing.

CLOUD CUSTOMER PROCESS MANUAL

The DataBank Cloud Customer Process Manual ("Process Manual") provides Customers a description of the Cloud Services provided by DataBank IMX ("DataBank"). Capitalized terms not defined in this Process Manual have the meanings set forth in this Agreement.

An electronic copy of the latest Process Manual can be found on the DataBank Website (https://www.databankimx.com/legal) in the Secure Downloads area.

The Process Manual is reviewed by DataBank periodically, modifications are posted on the listed web locations above.