PROVIDER SERVICES AGREEMENT

This Provider Services Agreement is entered into on January 19th, 2017 (the “Effective Date”), between

1. Clearwave Corporation, with an office at 219 Perimeter Center Parkway, Suite 526, Atlanta, GA 30346 (“Clearwave”),

AND

2. Texas A&M University Health Science center, a health related institution under the administration of Texas A&M University, a member of the Texas A&M University System, an agency of the state of Texas on behalf of the College of Medicine for it’s Texas A&M Physicians, with an office at 2900 East 29th St, Bryan, TX 77802 hereafter referred to as (“Provider”).

The parties agree to the terms and conditions set forth in this Provider Services Agreement (including the Schedules referenced in this Provider Services Agreement) (collectively, the “Agreement”). The signatory for Provider personally warrants that he or she has the authority to execute this Agreement for, and bind, Provider.

Signed for and on behalf of Clearwave:

Signature: __________________________
Name: Eric D. Anderson
Title: COO

Signed for and on behalf of Provider:

Signature: __________________________
Name: Barry C. Nelson, PhD
Title: Associate Vice President for Finance & Administration
BACKGROUND

Clearwave offers application hardware and software to provide a web-based provider management network to handle patient registration, eligibility verification, settlement of healthcare service, credit processing services and other communication and processing of healthcare transactions through the use of a web portal and network usable by various hardware devices (collectively, the “Services”). On and subject to the terms and conditions of this Agreement and attached Schedule A, Provider wishes to engage Clearwave, and Clearwave wishes to serve, as a provider of healthcare administrative management services, utilizing the Clearwave registration network and/or the web portal. Accordingly, for value received, the parties agree as follows:

TERMS AND CONDITIONS

1. ENGAGEMENT. On and subject to the terms and conditions of this Agreement, Provider hereby engages Clearwave, and Clearwave hereby agrees to serve, as a provider of the Services.

2. THE SERVICES.

2.1 Implementation and Use. To register and obtain eligibility verification, Provider’s patients may access the Clearwave network via a hardware device and input the requested information and such other necessary information to outline patient’s insurance information and healthcare needs or the Provider may provide a file of such patient information or enter such patient information directly through the Clearwave provider web portal. Through the use of such Services, the Provider may verify eligibility and benefit information for participating payors. A list of participating payors is available upon request. This list may change from time to time. Provider may need to create a login and password for Clearwave to certain payor’s websites (e.g. Medicaid, Tricare, AARP, EyeMed, VSP, etc.) and maintain those passwords for Clearwave’s Services to function properly (hereafter referred to as “Enhanced Connection”). In the case of Medicaid, the Enhanced Connection may also provide a means to eliminate a very expensive transaction charge levied by some Medicaid plans. If Provider elects not to use a Medicaid Enhanced Connection and Clearwave incurs a transaction charge from Medicaid Provider agrees to reimburse Clearwave for the transaction fees levied by Medicaid on Clearwave.

(a) Implementation and Training. After signing this Agreement, Provider will work diligently with Clearwave to configure Provider’s account, including, without limitation, completing the online registration form and establishing the access privileges for each Designated User (defined below). Provider is solely responsible for obtaining and maintaining the necessary hardware, browser, operating system software, communications links and services, and proper locations necessary to access and use the Services and for providing Internet connectivity to Provider’s personal computer(s) and to the Registration Stations (if applicable) sufficient to meet Provider’s utilization demands. Without limiting the foregoing, Clearwave may change the browser requirements for its web portal and other Services from time to time to incorporate new technology. Clearwave agrees to provide at least thirty days’ notice to Provider before releasing new software that requires a browser upgrade. After such notice, Provider is responsible for updating its hardware and software, including without limitation, Provider’s web browsers, to maintain compatibility with Clearwave’s portal and other Services.

(b) Access and Use. Provider is responsible for designating the individuals authorized to use the Services or Registration Stations on its behalf (each, a “Designated User”), and the scope of each such individual’s permissible use. Provider warrants and represents that each Designated User has all necessary authority to use the Services and Registration Stations to which such Designated User is assigned. Provider’s patients are not considered Designated Users under this license. Provider is not authorized to share its user login information with any third-party unless Clearwave gives Provider prior written approval. Additionally, each user login is unique and shall be assigned to one individual. Provider shall not permit its employees or contractors to share user logins. Provider may use
the Clearwave Provider Portal at each location designated in Schedule A.

(c) Features. Unless otherwise specified in Schedule A, Provider is contracting for the following services offered by Clearwave: real-time health insurance eligibility verification; access to Clearwave’s provider portal to review eligibility results and all Registration Station activities. The provider portal also allows the Provider to manage and create custom forms, add and delete payers and manage the overall workflow of the Patient Registration Station; interface between Clearwave and Provider’s scheduling/information system; self-service Patient Registration Stations that allow patients to scan driver’s licenses and insurance cards including optical character recognition software to automatically extract data from those cards, allows patients to make a payment using credit or debit cards through Provider’s existing payment processor or a preferred vendor of Clearwave’s, present custom forms and consents to the patient for review and if applicable the patient can accept or decline the consent. Additional features or more details regarding the above features may be included in Schedule A.

(d) Security. Provider’s access to the Services or Registration Stations will be through user passwords and identifications. Provider is solely responsible for maintaining the security of, and for all activities occurring under, user identifications and passwords of each Designated User, and for verifying any and all information or data transmitted, stored or received by Provider in using the Services or Registration Station. Provider will not, and will cause each Designated User to not, lend, give or disclose any user identifications or passwords to any unauthorized person, or permit any unauthorized person to use the Services or Registration Stations through the use of such user identifications, passwords or security features. Provider will not, and will cause each Designated User to refrain from attempting to perform any hacking, denial of service, or other malicious computer attack on Clearwave’s systems. Provider will notify Clearwave immediately upon Provider becoming aware of (i) any attack on or unauthorized use of the Services or Registration Station or (ii) any compromise of security with respect to a user identification or password of a Designated User. Furthermore, Provider is obligated to disable the login rights of each Designated User that leaves Provider’s employ or ceases to be a Designated User as soon as practicable. If Provider is unable to disable the login, for whatever reason, then Provider must notify Clearwave of the situation immediately.

(e) Patient Messaging Materials. Clearwave can supply Provider design templates for signage and handouts to educate Provider’s patients about the Registration Stations and Clearwave’s services. Provider may use these templates free of charge. Provider must receive permission from Clearwave if Provider wishes to use the templates in an altered format. Clearwave shall retain all intellectual property rights in the design templates. If Provider elects to have Clearwave print signs or handouts for Provider’s use then Provider shall reimburse Clearwave for the associated printing, shipping, and handling costs.

2.2 Service Availability and Maintenance.

(a) Availability and Functionality. Clearwave will use commercially reasonable efforts to keep the Services and Registration Stations available for Provider. If, at any time, the Services or Registration Station (as long as the unit is under warranty) is unavailable or improperly functioning, then Provider will promptly notify Clearwave, and Clearwave, as its sole obligation and liability to Provider for such problem, will provide the maintenance and remedial measures set forth in this Section 2.2. Clearwave warrants that its hosted services and network will be available to be accessed at least 99% (Uptime) of each full calendar year. Provider acknowledges that interruptions and loss of service may periodically occur as a result of (i) maintenance or repairs to the Services and Registration Stations, a component thereof, or related website (ii) congestion, outages or interruptions (including, without limitation, a force majeure event under Section 11.1), (iii) hardware or software failures of the Provider’s equipment, or (iv) an act or omission of Provider or a third party, including, without limitation, payer websites or eligibility connection being out of service (collectively, “Downtime”), and Clearwave will not be responsible or liable for any interruptions caused by the foregoing and these interruptions will be excluded from the Uptime guarantee calculation. If the service level falls below 99% for any calendar year, Clearwave will provide a 5% credit on the
following year’s Monthly Software, Support and Eligibility fees.

(b) Data Retention. Clearwave shall retain and make available to Provider each insurance eligibility response for twelve (12) months from the time the response is first received. Other patient data collected by Clearwave shall be retained during the initial term and any renewal term of this Agreement.

(c) Site Requirements. High speed internet connection is required. If there are no image transfer requirements, then a minimum 256 kbps download and 56 kbps upload is sufficient. If images are to be transferred over the network, then a minimum of 1 mbs up and 1 mbs down. Provider is responsible for providing an electrical outlet in close proximity or sufficient battery power to each Registration Station and unfettered access to the internet on ports 53, 80 and 443 (DNS, http and https) must be provided. The Registration Stations should be located in a relatively secure area to restrict access to unauthorized users and an area that promotes privacy for its users. If Provider uses a wireless connection for any computer or Registration Station connected to Clearwave’s system, then such wireless connection must be password protected and encrypted. Upgrades and improvements to Clearwave’s Services may require faster internet connection speeds, and Provider agrees to maintain the minimum connection speed necessary to utilize such improvements.

(d) Network Deficiencies. Clearwave’s Services are directly dependent upon the Provider’s network and internet connection. If Clearwave identifies a network deficiency that is outside Clearwave’s control, then Provider shall use its best efforts to correct such deficiency as quickly as possible. If (a) Provider requests Clearwave to assist in correcting the deficiency, and (b) if Clearwave elects to provide this service then Clearwave shall perform the work and invoice Provider (x) $100 per hour plus costs for materials if Clearwave internal staff performs the repair work, or (y) Clearwave’s actual costs plus 10% if Clearwave outsources the work to a third-party.

(e) Maintenance. Upon identifying a problem with the Services and a Registration Station, Clearwave will promptly investigate the problem to determine the appropriate measures to address the problem.

Any maintenance performed on the Services will be in accordance with Clearwave’s normal maintenance procedures and Registration Station Warranty set forth in Section 5.5. Clearwave will provide monitoring and support for the Services Monday through Friday 8 am to 5 pm Eastern Time, excepting major holidays.

3. FEES AND PAYMENT.

3.1 Fees and Expenses.

(a) Purchase and Implementation. Provider will be responsible for the purchase and reasonable implementation costs associated with the acquisition and installation of the Registration Stations, including, without limitation, (i) sales tax, if applicable, and (ii) travel and other expenses that Clearwave and its contractors incur in connection with such implementation. The purchase and implementation charges are set forth in Schedule A.

(b) Fees. Clearwave will invoice Provider for Clearwave’s Service, hardware, maintenance, training fees, and reasonable expenses attributable to Services provided to Provider under this Agreement. The fees and expenses are set forth in Schedule A. Provider shall also be responsible for any taxes that apply to the Registration Station and the Services except for taxes that relate to Clearwave’s net income or employment taxes.

(c) Integration. Integration is only included if the integration is specifically identified in the Schedule A. All integration work will be performed remotely. Provider must allow Clearwave to access Provider’s servers and systems with appropriate privileges to build and support the integration.

3.2 Invoicing, Payment & Employment Cost Index (“ECI”).

(a) Recurring Invoices. Clearwave will bill Provider in advance every quarter for any recurring fees. These invoices shall be due and payable by Provider within thirty (30) days from receipt of invoice

(b) Other Services. Provider may request additional services to be provided during the term of this Agreement. Such services and payment terms will be documented in an amendment to this Agreement.
or via a signed Quote prior to such services being added or provided.

(c) Monthly Fee Increases. The Monthly Fee detailed in Attachment 1 will not increase during the initial term of the Agreement unless additional registration stations are installed or services are added. For any Renewal Term, the Monthly Fee may increase not more than once each year by the lesser of (i) the change in the ECI as published by the U.S. Department of Labor in the twelve (12) prior calendar months plus five percent (5%) or (ii) seven percent (7%). Provider will be notified not less than sixty (60) days in advance of any increase in the Monthly Fee.

(d) Amounts Past Due. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

4. RELATIONSHIP AND OBLIGATIONS OF THE PARTIES.

4.1 Relationship. Each party is an independent contractor in the performance of this Agreement and will not be considered or permitted to be an agent, representative, servant, joint venturer or partner of the other, its parent or affiliates.

4.2 Provider Covenants & Obligations.

(a) Provider will use the Services only in accordance with (i) applicable laws, regulations, and rulings, now or hereafter imposed, and (ii) the conditions of use which may be established or specified by Clearwave from time to time and as may be set forth in any manuals, materials, documents or instructions furnished by Clearwave to Provider (electronically or otherwise).

(b) Provider represents and warrants that (i) it has the right and is free to enter into this Agreement and to fully perform its obligations hereunder; (ii) it has not and will not enter into any agreement that will conflict with or inhibit in any material way its ability to fully perform its obligations under this Agreement, (iii) Provider has all requisite rights to Provider Data (as defined herein) and other information uploaded to the Registration Station, (iv) Provider will execute any and all documents and comply with any and all applicable procedures, rules and regulations which Clearwave or applicable law may require for the processing and transmission of Provider’s data hereunder.

(c) Provider agrees that all information submitted to Clearwave shall be true and accurate in all respects. Provider will communicate changes and/or updates to Clearwave as soon as practicable when such information changes. Without limiting the foregoing, Provider’s failure (i) to maintain current passwords required to connect to insurance payer databases and/or (ii) to provide Clearwave updated and current passwords and registration information for access to payer databases may cause Clearwave to incur additional charges from Clearwave’s partners or clearing houses. In the event that Clearwave incurs any such additional charges, Clearwave may require the Provider to reimburse Clearwave for all such charges.

(d) Clearwave reserves the right to take all actions, including termination or suspension of Services pursuant to this Agreement, which it believes to be necessary to comply with applicable laws, regulations, rulings, and the Clearwave conditions of use as described above.

(e) Provider shall cooperate and coordinate with Clearwave in the implementation and maintenance of the Services.

5. WARRANTIES.

5.1 Right to Contract. Clearwave hereby warrants that it has the right and is free to enter into this Agreement and to fully perform its obligations hereunder and it has not and will not enter into any agreement that will conflict with in any material way its ability to fully perform its obligations under this Agreement.

5.2 HIPAA & HITECH. Clearwave will comply with (i) The Health Insurance Portability and Accountability Act of 1996, as amended, (HIPAA), (ii) The Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), and (iii) the applicable Rules and Regulations promulgated under HIPAA and HITECH to the extent that those acts and regulations apply to the Services under this Agreement.
5.3 INFRINGEMENT. Clearwave hereby warrants that (i) it has full right, power, and authority to provide the Services as contemplated in this Agreement; (ii) that to its knowledge, it has obtained all licenses from third parties (if any) that Clearwave as may be necessary for the provision of the Services as contemplated herein, and (ii) that to its knowledge, he provision of Services do not infringe upon any intellectual property rights of any third party.

5.4 Limitations and Exclusions. Except for the representations and warranties made in Sections 5.1, 5.2, 5.3 and 5.5, the Services, applications, and any information provided hereunder and the results thereof are provided on an AS IS basis without warranty of any kind. EXCEPT AS EXPRESSLY STATED HEREIN IN THIS AGREEMENT, CLEARWAVE MAKES NO WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, CONTENT ACCURACY, NONINFRINGEMENT, QUIET ENJOYMENT, OR OTHERWISE. Without limiting the foregoing, Provider acknowledges and agrees that Clearwave does not warrant that use of the Services will be uninterrupted, accurate, complete, secure, useful, error-free, or that all errors will be corrected.

5.5 Registration Station Warranty.

(a) New Registration Stations purchased pursuant to this Agreement come with a three-year hardware warranty on the all in one computer, magnetic card reader and OCR card reader and an advance unit replacement program. The warranty commences on the day the Registration Station is shipped to the Provider. If used Registration Stations are purchased, the warranty terms are specified in the Schedule A.

(b) During the warranty period, upon Clearwave’s receipt of a hardware claim, Clearwave will troubleshoot the issue. If Clearwave determines that the problem is caused by a hardware failure or defect, then Clearwave will ship a replacement part for the failed component and will have a service engineer onsite within 48 hours Monday to Friday to replace the failed component.

(c) This warranty does not cover intentional damage, damage caused by Provider or a third party in an attempt to repair or modify the Registration Station, or damage caused by abuse, misuse, or neglect by Provider, Provider’s patients, or any third party. In the event Clearwave determines that a replaced Registration Station or part was damaged or rendered inoperable by abuse, misuse, or neglect then Clearwave shall promptly notify Provider and Provider shall be responsible for the cost of the damaged part or Registration Station.

6. LIMITATION OF LIABILITIES.

6.1 Liability Limitation. To the extent permitted by applicable law, the liability of Clearwave, its agents, employees, officers, directors, shareholders, successors or assigns for loss or damages, whether for breach of this Agreement, breach of warranty or otherwise will be limited to the service fees paid to Clearwave by Provider in the 12-month period before the event giving rise to Clearwave’s liabilities, whether the liability arises from contract, tort, or other claims. Provider acknowledges Clearwave is not an insurer and its pricing reflects the limitations in this section 6.1; provided, however, that this liability cap shall not apply to damages to the extent they are caused by Clearwave’s gross negligence.

6.2 Exclusion of Damages. Clearwave will not be liable to Provider or any third party for any special, exemplary, indirect, incidental, consequential or punitive damages of any kind or for any costs of procurement of substitute services or any lost profits, lost business, loss of use of data or interruption of business arising out of any breach of this Agreement or any services
PERFORMED BY CLEARWAVE, EVEN IF CLEARWAVE WAS ADVISED OF THE
POSSIBILITY OF SUCH DAMAGES.

6.3 Indemnification.

(a) Each Party agrees to, the extent permitted by the
Constitution and laws of the State of Texas, to
indemnify, defend and hold the other Party and its
affiliates and their respective employees, directors,
officers and agents harmless against any claim,
liability, damages, losses, judgment, and other
expense (including but not limited to reasonable
attorney’s fees and court costs) (“Claim”) arising out
of or resulting from any third Party claims made or
proceedings brought against the other Party to the
extent such Claim arises in the execution or
performance of this Agreement and/or results from
the Party’s negligence or willful misconduct. The
Party requesting indemnification (the “Indemnified
Party”) has the right to defend any Claim. Each
Party’s obligations under this Section 6.3(b) shall
survive the expiration or termination, for any reason,
of this Agreement. To receive the indemnities set
forth in this Agreement, the Indemnified Party shall
promptly notify the other Party (the “Indemnifying
Party”) in writing of a claim or suit and shall provide
reasonable cooperation (at the Indemnifying Party’s
expense).

(b) The Indemnified Party shall give prompt written
notice to the Indemnifying Party or any Claim and
give the Indemnifying Party the authority to proceed
as contemplated herein and timely cooperate with
the Indemnified Party. The Indemnifying Party will
have the exclusive right to defend any such Claim,
and make settlements thereof at its own discretion,
and the Indemnifying Party may not settle or
compromise such Claim if it would have a material
adverse effect on the Indemnified Party, except with
prior written consent of the Indemnified Party,
which consent shall not be unreasonably withheld,
delayed or conditioned. At the Indemnifying Party
cost, the Indemnified Party shall promptly give such
assistance and information as may reasonably be
requested by Indemnifying Party to settle or oppose
such Claims. Notwithstanding anything herein to
the contrary, the right to pursue a claim on
behalf of Provider shall be subject to approval
of the Texas Attorney General, such approval
not to be unreasonably withheld.

6.4 Integration. Provider shall provide Clearwave
with at least 30 days’ notice before changing
versions, upgrading or otherwise modifying
Provider’s practice management system. If
integration is included in the Schedule A,
Clearwave will work with the Provider to enable
integration to Provider’s practice management or
hospital information system (“Provider System”) that conforms to the integration as specified in
Schedule A (“Integration Software”). An
Integration Error is a defect or error within the
Integration Software such that the integration does
not meet the integration specifications outlined in
this Agreement. Integration Errors do not include
problems caused by issues under Provider’s control,
including without limitation, Provider System server
failure, Provider losing internet connection, or
Provider’s internal network configuration. In the
event of an Integration Error, Clearwave will use
commercially reasonable efforts to resolve
the Integration Error, but Provider understands that a
third party’s support may be necessary to resolve
the Integration Error. If an Integration Error (A) is
not the result of a Provider System change or
upgrade, or (B)(i) is a result of a Provider System
upgrade and (ii) Provider has provided Clearwave at
least 30 days’ advance notice, then if Clearwave
cannot resolve the Integration Error within five
days of its occurrence then all ongoing charges to
Provider under this Agreement that are associated
with system integration shall cease until the
Integration Error is resolved. The preceding
sentence is Provider’s sole remedy for Integration Errors. Provider represents that it has
fully read the integration specifications and that the
Integration Software does not violate Provider’s
license agreement with the Provider’s System.
Clearwave makes no representation about the
Integration Software’s effect on Provider’s Systems
license.

7. CONFIDENTIALITY.

7.1 Definition. “Confidential Information” of a
party includes information, in any form, of or about
a party, or its services or patients, that is not
generally known by, or readily available to, the
public. Without limiting the foregoing, Provider
acknowledges and agrees that the Services and
Registration Stations, each component thereof, and
all documentation related thereto are Confidential Information of Clearwave, subject to the protections of this Section 7.

7.2 Use of Confidential Information.

(a) Each party may use the other’s Confidential Information solely for the purposes contemplated in this Agreement or otherwise agreed by the other party, and will only disclose such information internally on a need-to-know basis. Each party will use reasonable efforts to protect the other’s Confidential Information from unauthorized use or disclosure. For Confidential Information that is a trade secret under applicable law, a party’s obligations under this Section 7 will continue for the longer of two years after Agreement termination or until such information no longer is a trade secret under applicable law, and for all other Confidential Information, such obligations will continue for two years after Agreement termination. The restrictions on duplication and use of Confidential Information in this Section 7 will not apply to any information that is (i) independently developed by the party receiving such information without reference to the other’s Confidential Information or (ii) received from a third party without restriction on use or disclosure.

(b) Notwithstanding any other provisions of this Agreement, Clearwave may use information Clearwave obtains from Provider that is necessary for Clearwave to provide the Services. In addition, Provider acknowledges that Clearwave may transfer Provider’s information to a third party in connection with a permitted assignment of this Agreement or delegation of hosting or other duties. Provider hereby waives any claim to any compensation for the use of such information. In addition, Provider acknowledges and agrees that Clearwave may disclose information pertaining to Provider, its employees or customers and this Agreement to the Secretary of the Department of Health and Human Services and the Comptroller General, or any other government body, or duly authorized representatives of the foregoing, upon an audit or other inspection by any of the same of the records or facilities of Clearwave. All uses of patient information will comply with current state and federal privacy laws.

8. INTELLECTUAL PROPERTY.

8.1 Clearwave Materials. As between Clearwave and Provider, the Services and Registration Stations, any component thereof, and any copies thereof, in whole or in part, including, without limitation, translations, compilation, partial copies, modifications, updates, any images and applets, photographs, animations, images, video, audio, music and text incorporated in the Services and Registration Stations, and all copies, documentation and components relating to the Services and Registration Stations are the property of Clearwave. Provider has only the limited rights expressly granted by this Agreement. Clearwave reserves all rights not expressly granted hereunder. Clearwave and Clearwave’s products and services referenced herein are either trademarks or registered trademarks of Clearwave, and the names of other companies and products mentioned herein may be the trademarks of their respective owners. In addition, as between Clearwave and Provider, Clearwave will retain exclusive ownership of all rights, title and interest in and to software or other work product used or a derivative work of any of the foregoing. In addition, Clearwave may reuse scripts, codes, routines and subroutines that are of a generic nature created in its performance of this Agreement.

8.2 Data. As between Provider and Clearwave, Provider owns all rights to the data provided solely by Provider or Provider’s patients for use in connection with the Registration Stations or the Services (the “Provider Data”). Without limiting the foregoing, Provider Data includes health information, insurance benefit information and other personally identifiable information about Provider’s patients. The Parties will execute a separate Business Associates Agreement that will cover the use, disclosure and reporting requirements of personal health information (“PHI”). Provider is solely responsible for any errors, inaccuracies in or incompleteness of data not solely caused by Clearwave, and for reviewing and determining the accuracy of data and information it receives through the Services or Registration Stations.

8.3 Public Notice. Provider agrees that Clearwave may use Provider’s name to identify it as a user of Clearwave’s services and for Clearwave marketing, promotional, and/or corporate literature. In addition, Provider agrees that Clearwave may issue a press release identifying said Provider as a client of Clearwave, actively using Clearwave services and
providing Provider’s expected benefit from using such services.

8.4 Automation. Neither Provider nor its agents are authorized to employ any scripting, automation, surface integration, screen scraping, or other similar program to automate (i) the use of or (ii) interaction with the Services without Clearwave’s written consent which will not be unreasonably withheld. The Registration Station and portal are intended only for interaction with human users.

8.5 Reverse Engineering. Neither Provider nor its agents are authorized to use the Services to reverse engineer any aspect of the Services.

9. TERMINATION & SUSPENSION.

9.1 Termination.

(a) The term of this Agreement is set forth in Schedule A.

(b) Upon expiration or termination of the term of this Agreement, Provider will immediately pay to Clearwave any and all accrued Service fees, hardware, maintenance, training or implementation charges and expenses with respect to this Agreement. Except as otherwise set forth in this Agreement, each party will promptly return to the other all data, materials, hardware and other property of the other in its possession; provided that if Provider does not pay to Clearwave all amounts due upon such expiration of the Agreement, then in addition to any other available remedies, Clearwave may retain Provider’s property, including all data, materials, and hardware until all owed amounts are fully paid. Provider will give Clearwave written notice to delete Provider’s patient data from the Clearwave database and Clearwave will do so within 30 days of receipt of the written notice.

(c) Either party (a terminating party) may terminate this Agreement if there is a material breach by the defaulting party of a term of the Agreement, which breach has not been cured to the reasonable satisfaction of the terminating party within 30 days after written notice is provided by the terminating party to the defaulting party, which notice specifies such breach in reasonable particularity.

9.2 Suspension.

(a) Except as specified in § 9.2(b) below, Clearwave may after contacting Provider either by phone or e-mail, without any liability or obligation to Provider, suspend Provider’s use of the Services or Registration Station if, in Clearwave’s sole discretion, (i) Provider’s, or (ii) any of Provider’s Designated Users’, use of the Services or Registration Station (A) violates or may violate any applicable law or regulation, (B) breaches any terms of this Agreement, or (C) could damage or threaten the security of the Services or Registration Station or any of Clearwave’s third party vendors’, customers’ or users’ information, data, software or hardware. If Provider resolves the breach, damage, threat, or other issue that caused the suspension to Clearwave’s satisfaction then Clearwave will reinstate its Services to Provider. Clearwave may require Provider to comply with additional reasonable requirements – procedural, technical, or otherwise – imposed by Clearwave to ensure the security and legal compliance of Clearwave’s system.

(b) If Provider fails to make payment to Clearwave as provided in Schedule A then Clearwave may, in its sole discretion, suspend Provider’s access to the Services. Clearwave will notify Provider of the past due status and will provide a minimum of ten days to remedy the situation. If any such unpaid amounts remain unpaid after the ten day notice then Clearwave will have the right to suspend the service until payment is made. Once payment is made, Clearwave will reactivate the service the next business day. If any such unpaid amounts remain unpaid for a period of 30 days after written notice from Clearwave to Provider of nonpayment thereof, Clearwave may (reserving cumulatively all other remedies and rights under this Agreement and at law) terminate this Agreement without further notice to Provider.

10. NOTICES. All notices must be in writing (which includes valid electronic records under applicable law) and delivered to the following individuals and addresses:

If to Clearwave:
219 Perimeter Center Parkway, Suite 526
Atlanta, GA 30346
Attn: Gerard White, CEO
Phone: 678-738-1120
Fax: 678-738-1121
Notices sent via email shall be sent to support@clearwaveinc.com.

If to Provider:
Texas A&M Physicians
Address: 2900 East 29th St.
Bryan, Texas 77802
Attn: Melissa Fisher
Phone: 979-436-0472
Email: mafisher@medicine.tamhsc.edu

Each party must give the other written notice if any of the address information above changes. Notice of address change will be effective upon receipt.

11. MISCELLANEOUS.

11.1 Force Majeure. Clearwave will not be liable for any failure or delay in performance to the extent caused by any event beyond its reasonable control, including, without limitation, an act of God; flood; riot; fire; explosion; judicial or governmental act; terrorism; military act; strike or lockout; third party act or omission; failure of utility or telecommunications facilities; virus, worm, trojan horse or other code, command, file or program designed to interrupt, destroy or limit the functionality of any software, hardware or equipment; Internet slow-down or failure; lightning or other weather condition or event. Clearwave is expected to maintain sufficient capacity to meet performance demands and requirements of this Agreement.

11.2 Entire Agreement; Amendment. This Agreement (which includes each Schedule, all of which are hereby incorporated in this Agreement) constitutes the entire agreement between the parties and supersedes any and all prior agreements, understandings, covenants, promises, warranties and representations, oral or written, express or implied between the parties. Neither the course of conduct between the parties nor trade usage shall act to modify or alter the provisions of this Agreement. In the event Provider issues a purchase order, memorandum, or instrument covering the Services herein provided, it is hereby specifically agreed and understood that such purchase order, memorandum, or instrument is for Provider’s internal purposes only, and any and all terms and conditions contained therein, whether printed or written, shall be of no force or effect. This Agreement may only be amended by a writing signed by duly authorized representatives of by each party.

11.3 Collection. Should Clearwave prevail in a legal proceeding against Provider in a dispute that relates to or arises out of this Agreement, Provider agrees to pay Clearwave’s costs and expenses incurred in the proceeding, including, without limitation, Clearwave’s reasonable attorneys’ fees. Should Provider prevail in a legal proceeding against Clearwave in a dispute that relates to or arises out of this Agreement, Clearwave agrees to pay Provider’s costs and expenses incurred in the proceeding, including, without limitation, Provider’s reasonable attorneys’ fees.

11.4 Assignment of Agreement. Provider may not assign this Agreement without the prior written consent of Clearwave.

11.5 Governing Law. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties hereto.

11.6 Headings. The section headings of this Agreement are for the convenience of the parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.

11.7 Severability; Waiver. The invalidity or unenforceability of any provision of this Agreement will not affect the validity of enforceability of any other provision of this Agreement. Any waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law must be in writing and signed by an authorized representative of such party and will not constitute a waiver as to any past or future breaches or remedies.

11.8 No Third Party Beneficiaries. Except as herein expressly provided to the contrary, the provisions of the Agreement are for the benefit of the parties hereto solely, and not for the benefit of any other person, persons, or legal entities.

11.9 Hardware Ownership. Unless expressly stated to the contrary in Schedule A, Provider shall be responsible for the purchase and maintenance of all Registration Stations including all accessories physically attached or connected to the hardware.
device. Provider may purchase the hardware from Clearwave. Notwithstanding anything in Section 3 to the contrary, if the hardware is sold to Provider in an out-of-state transaction such that Clearwave is not responsible for collecting sales tax, then Provider is responsible for paying any applicable sales tax according to the laws of its state(s). If Provider is a non-profit, then Provider will be responsible for providing the required documentations in accordance with Provider’s state laws. Provider shall review the invoices submitted by Clearwave to determine if Clearwave has collected sales tax.

11.10 Third Party Software. The Clearwave Services may include third party software, including without limitation, anti-virus and operating system software. Clearwave shall ensure that all such third party software is properly licensed for Provider’s use. Provider agrees that (i) its possession of a Registration Station with any such third party software does not transfer any title or ownership of the third party software to Provider, (ii) Provider will not decompile, reverse engineer, sell, loan, copy, duplicate, or export to another country any third party software on a Registration Station or within the Clearwave portal without the express permission of Clearwave and the owner of the applicable software, (iii) PROVIDER WAIVES, TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, ALL CLAIMS AT LAW OR EQUITY, INCLUDING WARRANTY CLAIMS, AGAINST ANY OWNERS OR VENDORS OF THIRD PARTY SOFTWARE THAT IS INCLUDED IN THE SERVICES. The preceding waiver does not waive claims against Clearwave directly that are otherwise expressly permitted in this agreement.

11.11 Conflicts. If a conflict arises between these Terms & Conditions and Schedule A, then the terms in Schedule A shall be given highest priority and these Terms & Conditions shall be given second priority.

11.12 Limitations. The Parties are aware that there are constitutional and statutory limitations on the authority of Provider (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; and confidentiality (collectively, the “Limitations”), and terms and conditions related to the Limitations will not be binding on Provider except to the extent authorized by the Constitution and laws of the State of Texas. Neither the execution of this Agreement by Provider nor any other conduct, action, or inaction of any representative of Provider relating to this Agreement constitutes or is intended to constitute a waiver of Provider’s or the state’s sovereign immunity to suit.

11.13 Loss of Funding. Performance by Provider under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, then Provider will issue written notice to Clearwave and Provider may terminate this Agreement without further duty or obligation hereunder. Clearwave acknowledges that appropriation of funds is beyond the control of Provider.

11.14 Dispute Resolution. The dispute resolution process provided for in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Provider and Clearwave to attempt to resolve any claim for breach of agreement made by Clearwave that cannot be resolved in the ordinary course of business. Clearwave shall submit written notice of a claim of breach of contract under this Chapter to Provider’s Associate Vice President for Finance and Administration, who shall examine Clearwave’s claim and any counterclaim and negotiate with Clearwave in an effort to resolve the claim.

11.15 Public Information. Contractor acknowledges that TAMHSC is obligated to strictly comply with the Public
Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

Upon TAMHSC’s written request, Contractor shall provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to TAMHSC in a non-proprietary format acceptable to TAMHSC. As used in this provision, “public information” has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which TAMHSC has a right of access.

Contractor acknowledges that TAMHSC may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
Schedule A
Texas A&M Physicians

A. Scope:
Provider and Clearwave enter into this agreement, whereby Clearwave agrees to implement Clearwave’s software, Registration Stations, and services set forth below.

B. Term:
The initial contract term will be for thirty-six (36) months from the earlier the date the Registration Station is installed at the Provider or 120 days from the date of execution of this agreement. The contract term will automatically renew on a yearly basis. Notice of nonrenewal must be sent more than sixty (60) days before the contract renews. The maximum term of this agreement shall not exceed five years.

C. Cancellation Clause:
Provider has the option to cancel this contract at anytime with 90 days notice in writing.

D. Deliverables
1. **Registration Station Implementation.** Clearwave will install Registration Stations as outlined in Attachment 1.
2. **Eligibility Verification.** Clearwave will support real-time eligibility verification via the provider portal. There are no transactions fees associated with this service.
3. **Integration.** This contract includes integration to GE Centricity Practice Solutions as detailed in Attachment 2.
4. **Management and User Reporting.** Clearwave has reports that provide detailed and summary information on patient activity at the Registration Station, productivity, eligibility information, duplicate patients and other reports.
5. **Training.** Clearwave will perform the remote (web) and on-site training as outlined in Attachment 1. Additional training hours can be purchased if needed. Note: Travel expenses incurred will be billable at cost.
6. **Mobile Solution.** This Agreement includes Clearwave’s mobile check-in solution with features including reminding the patient of their scheduled appointment, allowing the patient to confirm such appointment and allowing the patient to review and update the demographic data on file and any required forms or consents via Clearwave’s mobile solution for the locations where registrations stations are deployed.

E. **Registration Station Delivery and Installation**
Provider will email the delivery address and onsite contact information to Clearwave at least four weeks in advance of the expected delivery date. Delivery shall include unpacking the Registration Station, placing the Registration Station in the requested location within the office, and removal of the packing materials. Provider will be responsible to inspect the Registration Station, complete a checklist, and accept that the Registration Station was delivered in excellent physical condition. If there is any material physical damage, the provider should not accept delivery and immediately contact their Clearwave Implementation Consultant. If the Registration Station is in excellent physical condition, the completed checklist needs to be emailed to Clearwave within 48 hours of the Registration Station delivery. If a checklist is not received within this time period, it will be presumed that the Registration Station was delivered in excellent physical condition. Once accepted, the Provider assumes 100% liability for any physical damage to the Registration Station.
Provider is responsible for plugging the Registration Station power into the electrical outlet, plugging the Ethernet cord into the Ethernet connection, turning on the Registration Station and following the instructions provided to unlock the Registration Station and assign the Registration Station to the designated Provider location.
The cost of delivery is not included in the Registration Station cost. Clearwave will invoice the Provider for these costs after delivery.

F. **Invoicing:**
1. Provider will pay Clearwave all one-time fees and the first quarter of monthly fees as outlined in Attachment 1.
2. Provider will be responsible for Shipping & Handling fees related to the Registration Stations as well as Travel expenses for On-Site Training.
3. Provider will be billed quarterly in advance for the monthly fees starting at the beginning of the contract Term as specified in Section B above.

G. Final Contract Pricing: See Attachment 1 for detailed pricing calculations.

Agreed this 19th day of January, 2017

Provider

Signature 2/9/2017

Barry C. Nelson, Ph.D., Assoc. VP for Finance & Admin.

Name, Title

Clearwave Corporation

Signature

Eric D. Anderson, COO

Name, Title