

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (hereinafter referred to as “**the Agreement**”) is being made and entered into by and between Licensee (“**Covered Entity**”) and CureMD.com, Inc. (“**Business Associate**”) and will be read as an integral party of the License and Services Agreement (“**EULA**”) (Both Covered Entity and Business Associate would also be referred as “**Party**” individually and collectively as “**Parties**” herein below)

### **RECITALS**

**WHEREAS**, Covered Entity and Business Associate are Parties to the EULA pursuant to which Business Associate provides certain services to Covered Entity. While providing services, Business Associate creates or receives Protected Health Information from or on behalf of Covered Entity, which information is subject to protection under Federal Health Insurance Portability and Accountability Act of 1996 (hereinafter “**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (hereinafter “**HITECH Act**”), and related regulations promulgated by the Secretary (hereinafter “**HIPAA Regulations**”);

**WHEREAS**, in light of the foregoing and the requirements under HIPAA, the HITECH Act and the HIPAA Regulations, both parties are hereby bound by the terms and obligations provided herein below;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1. DEFINITIONS:

- a. General: Terms used, but not otherwise defined, in this Agreement shall have the same meaning given to those terms by HIPAA, the HITECH Act and HIPAA Regulations as in effect or as amended from time to time.
- b. Specific:
  - i. Breach shall have the same meaning as per the term ‘breach’ enshrined under the HITECH Act, Section 13400(1).
  - ii. Electronic Health Record shall have the same meaning as per the term ‘electronic health record’ enshrined under the HITECH Act, Section 13400(5).
  - iii. Electronic Protected Health Information shall have the same meaning as per the term ‘electronic protected health information’ provided under 45 CFR § 160.103, limited to the information that Business Associate creates, receives, maintains or transmits for or on behalf of Covered Entity.
  - iv. Individual shall have the same meaning as per the term ‘individual’ given under 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
  - v. Privacy Rule shall have the same meaning the Standards of Privacy of Individually Identifiable Health Information at 45 CFR Part 160, Part 162 and Part 164.

- vi. Protected Health Information shall have the same meaning as per the term 'protected health information' provided under 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Notwithstanding the foregoing, Protected Health Information shall include such information that is included in 'Data' created or received by Business Associate as such term may be defined under any Services Agreement.
- vii. Designated Record Set shall mean those records maintained by Business Associate, including the medical and billing records about Individuals, in addition to any enrollment, payment, claims adjudication and case or medical management record systems.
- viii. Required by Law shall have the same meaning as per the term 'required by law' in 45 CFR § 164.103.
- ix. Secretary shall mean the Secretary of the Department of Health and Human Services or his designee.
- x. Security Rule shall mean the Security Standards at 45 CFR Part 160 and Part 164.
- xi. Services Agreement shall mean (i) any present or future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to Covered Entity which involve the use or disclosure of Protected Health Information, and (ii) certain Services Agreement executed between the Covered Entity and Business Associate. The Services Agreement is amended by and incorporates the terms of this Agreement and subsequently this Agreement is deemed an integral part thereof.
- xii. Unsecured Protected Health Information shall have the same meaning as per the term provided in the HITECH Act, Section 13402(h)(1).

## 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Use and Disclosure: Business Associate agrees not to use or disclose Protected Health Information (hereinafter "**PHI**") other than as permitted or required by the Services Agreement, this Agreement or as required by Law.
- b. Appropriate Safeguards: Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Without limiting the generality of the aforementioned, Business Associate shall:
  - i. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information as required by the Security Rule;

- ii. Ensure that any agent, including a subcontractor, to whom Business Associate provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect Electronic Protected Health Information;
  - iii. Promptly report to Covered Entity regarding any Security Incident of which Business Associate becomes aware. In addition, Business Associate agrees to promptly notify Covered Entity following the discovery of a Breach of Unsecured Protected Health Information. A Breach shall be considered as 'discovered' on the first day the Breach is known, or reasonably ought to have been known, to Business Associate or any of its employees, officers or agents, other than the individual committing the Breach. Any notice of a Security Incident or Breach of Unsecured Protected Health Information shall include the identification of each individual whose PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Security Incident or Breach as well as any other relevant information regarding the Security Incident or Breach, provided that any such reports or notices shall be subject to the prior written approval of the Covered Entity.
- c. Reporting: Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, by the Law or by the Services Agreements of which Business Associate becomes aware.
- d. Mitigation: Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its employees, officers or agents in violation of the requirements of this Agreement (including, without limitation, any Security Incident or Breach of Unsecured Protected Health Information). Business Associate agrees to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this Agreement and / or any Security Incident or Breach. Business Associate shall also reasonably cooperate and coordinate with Covered Entity in the preparation of any notices or reports to the Individual, a regulatory body or any third party required to be made under HIPAA, the HIPAA Regulations, the HITECH Act, or any other Federal or State Laws, rules or regulations.
- e. Agents and Subcontractors: Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Access to Designated Record Sets: To the extent that Business Associate possesses or maintains PHI in Designated Record Sets, Business Associate agrees to provide access to such Designated Record Sets at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to an Individual in order to comply with the requirements given under the HIPAA Regulations. If an Individual makes a request for access to PHI directly to Business Associate, it shall notify Covered Entity within three (3) business days of such a request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

- g. Amendments to Designated Record Sets: To the extent that Business Associate possesses or maintains PHI in Designated Record Sets, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to HIPAA Regulations at the request of Covered Entity or an Individual, and in the time and manner reasonably designated by Covered Entity. If an Individual makes a request for an amendment to PHI directly to Business Associate, it shall notify Covered Entity within ten (10) business days of such a request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.
  - h. Access to Books and Records: Business Associate agrees to make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate, on behalf of Covered Entity, available to the Covered Entity, or to the Secretary in the time and manner designated by the Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
  - i. Accounting: Business Associate agrees to document such disclosures of PHI and information pertaining to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA, HIPAA Regulations and the HITECH Act, as of its effective date.
  - j. Requests for Accounting: Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with Clause 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA, HIPAA Regulations and the HITECH Act, as of its effective date. If an Individual makes a request for an accounting directly from the Business Associate, it shall notify Covered Entity of the request within ten (10) business days of such request and will cooperate with Covered Entity to send the response to the Individual.
  - k. Forwarding Individual's Requests: If forwarding the individual's request for access to, amendment of, or accounting of PHI to Covered Entity would cause the Business Associate to violate the HIPAA, HIPAA Regulations or the HITECH Act, the Business Associate shall instead respond to the individual's request as required by such law and notify the Covered Entity of such a response as soon as practicable.
3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE
- a. Services Agreement: Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate HIPAA, HIPAA Regulations or the HITECH Act as of its effective date if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
  - b. Use for Administration of Business Associate: Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

- c. Disclosure for Administration of Business Associate: Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management of Business Associate, provided that (a) disclosures are required by Law, or (b) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Permissible requests by Covered Entity: Except as set forth in this Clause 3 of this Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

4. OBLIGATIONS OF COVERED ENTITY.

- a. Notice of Privacy Practices: Covered Entity agrees to provide individuals with notice of its privacy practices and obtain acknowledgment of receipt thereof in compliance with 45 C.F.R. § 164.520. In addition, upon request Covered Entity shall promptly provide Business Associate with a copy of its privacy practices in accordance with 45 C.F.R. § 164.520, as well as any modifications thereto.
- b. Changes In or Revocation of Permission by Individuals: Covered Entity shall promptly notify Business Associate, in writing, of any changes in, or revocation of, an individual's permission to use or disclose PHI, if such changes or revocation affects Business Associate's permitted or required uses and disclosures.
- c. Covered Entity's Agreements to Restrict Use or Disclosure: In the event Covered Entity agrees to restrict the use and/or disclosure of PHI in accordance with 45 C.F.R. § 164.522, it shall promptly notify Business Associate, in writing, of the nature and extent of said restriction. The Covered Entity shall not agree to restrictions on the use or disclosure of PHI that might adversely affect the Business Associate, its ability to perform under the Services Agreement or increase the costs of such performance. The Covered Entity shall notify the Business Associate of any such restrictions that the Covered Entity may have entered into prior to the execution of this Agreement. If any such restrictions exist prior to the execution of the Agreement, the Business Associate shall recover costs that are associated with such restrictions.
- d. Permissible Requests by Covered Entity: Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under HIPAA or other applicable law or regulation governing the privacy of PHI.
- e. Consents and Authorizations: Covered Entity represents and warrants that any and all consents, authorizations, or other permissions required by HIPAA or other applicable law (including state law) necessary to allow Business Associate to perform the administrative functions, services, or activities on behalf of Covered Entity consistent with this Agreement have been properly secured.

- f. Third Party Access: By granting access to third parties outside the United States of America access to the Business Associate's products or services, the Covered Entity accepts and agrees to the Business Associate's Release Agreement for Third Party Access.

## 5. TERM AND TERMINATION

- a. Term: This Agreement shall be effective as of the date mentioned on this Agreement and shall terminate when all underlying agreements between the parties terminate and the parties cease to have an ongoing business relationship.
- b. Termination for Cause:
  - a. In the event a party fails to perform the obligations under this Agreement (the "Breaching Party"), the non-breaching party may, at its option:
    - i. Require the Breaching Party to submit to a plan of compliance, including monitoring by Non-Breaching Party and reporting by the Breaching Party, as the Non-Breaching Party, in its sole discretion, determines necessary to maintain compliance with this Agreement and applicable law. Such plan shall be incorporated into this Agreement by amendment hereto; and
    - ii. In case of breach by the Business Associate, immediately discontinue providing PHI to Business Associate with or without written notice to Business Associate.
    - iii. Furthermore, the Non-Breaching Party may immediately terminate this Agreement and related agreements if the Non-Breaching Party determines that Breaching Party has breached a material term of this Agreement.
    - iv. Alternatively, Non-Breaching Party may choose to (i) provide Breaching Party with ten (10) days written notice of the existence of an alleged material breach; and (ii) afford Breaching Party an opportunity to cure said alleged material breach to the satisfaction of Non-Breaching Party within (10) days. Breaching Party's failure to cure shall be grounds for immediate termination of this agreement. Non-Breaching Party's remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.
- c. Effect of Termination:
  - i. Except as provided in Clause 5(c)(ii), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of PHI whatsoever.
  - ii. Notwithstanding the foregoing, in the event that Business Associate reasonably determines that returning or destroying the PHI is not feasible, Business Associate shall provide Covered Entity a notification of the conditions that make the return or destruction infeasible, and Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those

purposes that make the return and destruction infeasible, for as long as Business Associate maintains such PHI.

## 6. COMPLIANCE WITH HIPAA STANDARDS

To the extent applicable when providing its services and/or products, Business Associate shall comply with all HIPAA Standards and requirements (including, without limitation, those specified in 45 CFR Part 162) with respect to the transmission of health information in electronic form in connection with any transaction for which the Secretary has adopted a standard under HIPAA (“Covered Transactions”). Business Associate will make its services and/or products compliant with HIPAA’s Standards and requirements no less than thirty (30) days prior to the applicable compliance dates under HIPAA. Business Associate represents and warrants that it is aware of all current HIPAA Standards regarding Covered Transactions, and Business Associate shall comply with any modifications to HIPAA Standards which become effective from time to time. Business Associate agrees that such compliance shall be at its sole cost and expense, which expense shall not be passed on to Covered Entity in any form, including but not limited to, increased fees. Business Associate shall require all of its agents and subcontractors (if any) who assist in providing its services and/or products to comply with the terms provided herein.

## 7. MISCELLANEOUS

- a. Assignment of Rights and Delegation of Duties: This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Assignments made in violation of this provision are null and void.
- b. Regulatory References: A reference in this Agreement to a Clause in HIPAA, HIPAA Regulations or the HITECH Act means the section as in effect or as amended from time to time, for which compliance is required.
- c. Amendment: The Parties agree to take such action as is necessary to amend the Services Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations and the HITECH Act.
- d. Survival: The respective rights and obligations of Business Associate as per Clause 5(c) of this Agreement shall survive the termination of the Services Agreement or this Agreement.
- e. Interpretation: Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HIPAA Regulations and the HITECH Act.
- f. Indemnification: Covered Entity shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Business Associate and its respective employees, directors, and agents from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorney’s fees, including at trial and on appeal) asserted or imposed against the Business Associate arising out of the acts or omissions of Covered Entity or any of its

- employees, directors, or agents related to the performance or nonperformance of this Agreement.
- g. Severability: The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
- h. Miscellaneous: The terms of this Agreement are hereby incorporated into the Services Agreement. In the event of a conflict between the terms of this Agreement and the Services Agreement, the terms of this Agreement shall prevail as it pertains to the subject matter herein. This Agreement shall be governed by, and construed in accordance with the laws of the State of New York, exclusive of conflict of law rules. Each party to this Agreement hereby agrees and consents that any legal action or proceeding with respect to this Agreement shall only be brought in the Courts of the State where the Covered Entity is located. The Services Agreement together with this Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein, and this Agreement supersedes and replaces any former Business Associate Agreement or Addendum entered into by the Parties. No modifications or amendments to this Agreement shall be deemed effective unless executed by both Parties in writing.