License and Services Agreement

This License and Services Agreement ("Agreement") is entered into between CureMD.com, Inc. ("**CureMD**"), and the individual or entity named in the Order Form ("**Licensee**"). By subscribing for access to, and use of, the Software (as defined below) and Third Party Services (as defined below), Licensee agrees to be bound by this Agreement.

1. **Definitions**. The definitions set forth below may be further defined and/or described in attached exhibits.

   1.1. "Authorized Users" means the Licensee and those employees, agents and independent contractors who are individually authorized by the Licensee and CureMD to have access to the Programs and Services and to whom CureMD has assigned a unique identifier for access to the Programs and Services.

   1.2. "Confidential Information" means the terms of this Agreement, CureMD Information and Materials, all confidential and business proprietary information of CureMD or Third Party Service provider disclosed in connection with the provision or receipt, as the case may be, of Services hereunder; provided, however, that the term "Confidential Information" does not include any information that (i) is or becomes a part of the public domain through no act or omission by Licensee; (ii) was in the Licensee's lawful possession prior to the disclosure and had not been obtained by the Licensee, either directly or indirectly, from CureMD; (iii) is lawfully disclosed to the Licensee by a third party without restriction on disclosure; or (iv) is independently developed by the Licensee.

   1.3. "CureMD Information and Materials" means all demonstration materials, documents, files, data, communications, emails, reports, analyses, Documentation and other materials prepared, created, transmitted or provided by, or on behalf of, CureMD to the Licensee and Authorized Users.

   1.4. "Data Storage" means disk space allocated for the storage of documents, images, scheduled reports and other files (including Licensee Data).

   1.5. "Documentation" means user and technical manuals, training and other documentation describing the Programs and Services features, functionalities, requirements and specifications as may be changed and communicated to the Licensee via the Programs and Services.

   1.6. "HIPAA" means Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.

   1.7. "Implementation Services" means onboarding, training and other consulting services that may be provided by CureMD to the Licensee, as identified on an Order Form.

   1.8. "Licensee Data" means all information entered by Licensee into the Software or Third Party Services. For the avoidance of doubt, the term "Licensee Data" does not include any information that has been properly de-identified as contemplated by Section 8.6 hereof.

   1.9. "Non-Provider License" means a limited license for any personnel employed by or under contract with Licensee who does not have a National Provider Identifier ("NPI"), including but not limited to office managers, nurses, secretaries, or other administrative staff.

   1.10. "Order Form" means an order form or work order issued by CureMD and agreed to by Licensee pursuant to which Licensee subscribes to Programs or Services, including any addendum.

   1.11. "Programs and / or Services" means the Software, Services and / or Third Party Services.

   1.12. "Providers" means healthcare providers authorized to use the Programs or Services, each of whom shall be registered in the Order Form. Providers will be classified in accordance with the following:
   1.12.1 "Full Time Provider" means any provider that works more than 2 days a week and has a valid NPI employed by or under contract with Licensee to provide healthcare services.

1.12.2 "Part Time Provider" means any provider that works 2 days or less per week and has a valid NPI employed by or under contract with Licensee to provide healthcare services.

1.13. "Services" means Support Services, Implementation Services, Third Party Services and any other service purchased by Licensee (whether identified on an Order Form or otherwise contemplated by this Agreement).

1.14. "Software" means the computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled which is owned or licensed by CureMD in object code form, and that Licensee has subscribed to as set forth in an Order Form; provided, however, that the term "Software" does not include any Third Party Service.

1.15. "Subscription Fee" means the fee for subscribing to the Programs or Services as set forth in the Order Form inclusive of fees which may include other services offered as part of a package.

1.16. "Support Services" means those support services provided by CureMD pursuant to Section 17.

1.17. "Third Party Services" means any software, offering, product or functionality that Licensee uses (whether or not specifically subscribed for in an Order Form), but which is provided by an independent third party.

1.18. "Third Party Terms" means third party pass-through terms set forth in the Terms and Conditions Applicable to Third Party Services available at www.curemd.com/LSA-ThirdPartyTerms.pdf and incorporated by reference herein pursuant to which the Third Party Services are sublicensed to Licensee.

2. **Right to Use Programs and Services**. During the term of this Agreement, CureMD grants to Licensee a non-exclusive, non-transferable, limited license for Authorized Users to access and use the Programs and Services set forth in the Order Form. Licensee shall access the Programs and Services solely for Licensee's own internal business operations located and from within the United States of America or any U.S. territory. Licensee shall only access and use the Programs and Services for healthcare purposes and in accordance with applicable law.

2.1. Use of Software. The Licensee acknowledges that the continued integrity of the Programs and Services and CureMD's performance of its obligations described in this Agreement are dependent upon Licensee's use of the Programs and Services in accordance with this Agreement and the Documentation.

In the event that CureMD or its Third Party Service providers grant Licensee permission to alter, modify or customize any of the Programs or Services, then Licensee assumes all liability for such altered, modified or customized Programs and Services. Licensee hereby acknowledges and agrees that CureMD and its Third Party Service providers disclaim all warranties, express and implied, regarding any Licensee-altered, customized or modified Programs and Services.

2.2. Contractors. Licensee may permit third-party independent contractors ("Contractors") to access and use the Programs and Services only in accordance with the terms of this Agreement, provided that such access and use is pursuant to a written, binding agreement between Contractor and Licensee ("Contractor Agreement") that is at least as protective of CureMD's rights in and to the Programs and Services, CureMD Information and Materials, Confidential Information as this Agreement. Licensee shall ensure that each Contractor fully complies with its Contractor Agreement, and Licensee shall be liable to CureMD for any breach by Contractor thereof or this Agreement. LICENSEE ACKNOWELDGES AND AGREES THAT CUREMD ASSUMES NO LIABILITY FOR ANY CONSEQUENCES WHATSOEVER ARISING OUT OF OR RELATING TO THE USE OR ACCESS BY THE CONTRACTOR OF THE PROGRAMS AND SERVICES. The Licensee will indemnify, defend and hold CureMD harmless for any loss, damages, penalty and injury whatsoever that may arise from the access or use of the Programs and Services by the Contractor.

2.3.   <u>Prohibited Uses</u>. Licensee shall not, and shall not permit any third party to: (i) sublicense, copy, distribute, transmit, display, publish, assign, convey, modify, create derivative works from, derive specifications from, encumber, exhibit, alter, integrate, combine, translate, record, reverse engineer, decompile or disassemble or otherwise attempt to discover in any way whatsoever the Programs or Services or any source code, underlying ideas or algorithms, software or system thereto; (ii) alter, encumber, transfer, sell or lease the Programs or Services, or any Confidential Information, to any third party; (iii) allow any third party or unauthorized party to access or use the Programs or Services for any purpose; (iv) access or use the Programs or Services for third party training, commercial time-sharing, software hosting, data processing services, services rental or service bureau use; (v) remove, deface, obscure, or alter Programs or Services' copyright notices, trademarks or other proprietary rights notices affixed to or provided as part of the Programs or Services; (vi) compromise the security or integrity of any data, equipment, software, or system input or output of the Programs or Services; (vii) use, reproduce, publish, or distribute content in connection with the Programs and Services that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy, or other personal or proprietary right; (viii) misuse the Services or use the Services for illegal purposes; (ix) use, or input any Licensee Data in, the Programs and Services or any part thereof for any unlawful, offensive purpose, or to mislead or harass anyone or transmit any libelous, abusive, threatening, harmful, obscene or otherwise objectionable material of any kind or nature; and (ix) conduct penetration testing.

Use of or access to the Programs and Services not in accordance with this Agreement is strictly prohibited. CureMD may limit or suspend permission to access or use the Programs and Services immediately if the terms of this Agreement are violated.

2.4.   <u>Professional Responsibility</u>. The Licensee acknowledges and agrees that the Programs and Services, and CureMD Information and Materials are not intended to be used as diagnostic tools or to provide determinations. Information contained or entered therein in no way replaces or substitutes the professional judgment or skill of Licensee. Licensee and Authorized Users accept all risks arising from, and are solely responsible for, their professional, advisory, analytical and technical services including patient examination, diagnosis, prescription, treatment and personal injury or loss of life. Neither CureMD nor its Third Party Service providers assume any responsibility for actions of Licensee which may result in any liability or damages due to malpractice, failure to warn, negligence or any other basis.

2.5.   <u>Licensee Responsibilities</u>. Licensee shall be solely responsible for (i) ensuring that the Authorized Users' access and use of the Programs and Services are in accordance with this Agreement and Documentation; (ii) implementing and maintaining appropriate and adequate administrative, physical and technical safeguards in accordance with HIPAA, and securing its hardware, environment and software; (iii) safeguarding the confidentiality of Log-In Credentials (defined below) of the Licensee or its Authorized Users; (iv) obtaining access to the internet using software and hardware that meet CureMD's system requirements, including security requirements in accordance with the Documentation; and (v) obtaining and maintaining all applicable federal, state and local licenses.

2.6.   <u>Licensee Responsibility for Licensee Hosted Version</u>. If the Licensee has licensed the Licensee Hosted Version of the Programs and Services, the Licensee shall be solely responsible for implementing adequate administrative, physical and technical safeguards in accordance with HIPAA to protect the information stored within the Licensee Hosted Version, including risk assessment and risk analysis. The Licensee will indemnify, defend and hold CureMD harmless for any loss, damages, penalty and injury that may arise from any loss, damage or corruption of data stored within the Licensee Hosted Version.

3.   **Ownership / Title**. As between the parties, CureMD and Third Party Service providers retain all title and interest in any copyrights, patents, trade secrets, know-how and other proprietary rights of any kind in the Programs and Services, CureMD Information and Materials, CureMD Confidential Information, and all edits, improvements, additions, modifications, interfaces, ideas, advices, recommendations, any custom templates, change requests, documents or proposals and derivative works prepared from or relating thereto. Licensee does not acquire any rights, express or implied other than the limited rights as set forth in the Agreement.

4.   **Monitoring; Access; Verification**. CureMD shall have the right to access and monitor use of the Programs and Services by Licensee to (i) operate and monitor the Programs and Services properly; (ii) protect itself or others; (iii) maintain accounting

records regarding the usage of the Programs and Services by the Licensee; (iv) verify the list of Authorized Users; and (v) retrieve usage patterns, behaviors, trends, error reports. This access to the Licensee's information will be strictly for the purposes mentioned herein, and in full compliance with HIPAA.

5. **Providers, Log-In Credentials**. Licensee may designate, or CureMD shall provide, user account names and / or passwords ("Log-In Credentials") for the Authorized Users. Licensee acquires no ownership rights to any Log-In Credentials, and Log-In Credentials may be revoked or changed at any time.

   Licensee shall be liable and responsible for all activities conducted through, and any consequences arising from, the Log-In Credentials, whether or not such activities have been authorized by Licensee. Licensee will promptly notify CureMD if Log-In Credentials' confidentiality or use is compromised.

   Licensee will, and CureMD may, terminate any Authorized User's access to Programs and Services (i) when an Authorized User ceases to perform work on behalf of Licensee; (ii) if an Authorized User breaches any term of this Agreement; or (iii) if CureMD reasonably determines that Authorized User's use or access adversely effects CureMD or the Programs and Services.

   Licensee must have a minimum of one (1) Full Time Provider. If a Part-Time Provider increases the number of days worked, Licensee will be required to purchase a Full Time Provider license and pay the increase in license fees. All applicable fees will be retroactive.

6. **Subscription Fees; Payment**.
   6.1. Subscription Fee. The Subscription Fees shall be determined on the basis of the number of Providers. The fees for one-time Services (e.g. set-up and Implementation Services) are due upon acceptance of any Order Form and prior to delivery of the applicable Service, unless otherwise stated in the Order Form.

   6.2. Payment Terms. Beginning on the Effective Date (defined below), Licensee will pay Subscription Fee as specified in the Order Form in advance. Effective date of the Subscription Fee period shall be the day the Licensee accesses the CureMD implementation portal ("Effective Date"). All monthly or recurring Subscription Fees shall be invoiced monthly in advance. Changes to pricing will be in accordance with Section 28.10 of this Agreement.

   Subscription Fees are payable in U.S. Dollars and shall be due and payable within thirty (30) days of receipt of invoice ("Due Date"). An administrative late charge computed at the rate of one and one-half percent (1.5%) per month or the highest allowable by law, whichever is lower, will be charged for any invoice not paid by the Due Date for every month the amount remains unpaid.

   Licensee acknowledges and agrees that there shall be no refunds for any reason under this Agreement for any service delivered or scheduled to be delivered whatsoever, including termination of this Agreement regardless of the cause of such termination.

   6.3. Suspension / Revocation of Access. Licensee acknowledges that in the event that Subscription Fees are not paid within thirty (30) days of Due Date, CureMD shall have an additional right to convert Licensee's access to, and use of, the Programs and Services, to a limited read-only access until the delinquent Subscription Fees together with administrative late charge are paid to CureMD. CureMD further reserves the right to disable the Licensee's limited read-only access to the Programs and Services in case of continued default of payment within a period of fifteen (15) days thereafter.

   6.4. Invoice Disputes. Licensee shall have twenty-one (21) days from receipt of an invoice to dispute any portion of the invoice and any dispute not raised in writing within such period is hereby irrevocably waived by Licensee. The parties shall work together in good faith to resolve any disputes within ten (10) days. The Licensee shall pay any amount that is no longer in dispute within ten (10) days after such dispute is resolved.

   6.5. Collections. To the extent CureMD incurs any expenses in collecting (or seeking to collect) unpaid amounts due from Licensee under this Agreement (including, but not limited to, reasonable attorneys' fees), Licensee shall be liable for any such expenses, subject to extent permitted by applicable federal, state, and local laws and regulations.

6.6. <u>Addition / Removal of Providers</u>. If Licensee adds one or more Providers, the Licensee shall pay additional Subscription Fees, including any support and maintenance fees, calculated at the then-current rate for additional providers, and pro-rated for the applicable portion of the month in which the provider is added.

6.7. <u>Additional Products / Services</u>. CureMD may, upon mutual written agreement with the Licensee, charge additional fees for any additional products / services, Third Party Services and products, network access, connectivity solutions, subscription services, tools, knowledge bases, databases, and libraries, etc., not originally included in this Agreement and to which Licensee gains access.

6.8. <u>Taxes</u>. The fees listed in the Agreement (including the Order Form) shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes; there shall be added to all payments hereunder amounts equal to any applicable taxes levied or based on this Agreement, exclusive of taxes based on CureMD's net income. If CureMD is found to be responsible for the withholding and payment of taxes on behalf of Licensee, Licensee agrees to indemnify CureMD with respect to the full amount of taxes due, together with applicable interest and penalties. If Licensee is required to withhold any tax from any payment, then the amount of the payment will be automatically increased to completely offset such tax so that the amount remitted to CureMD, net of all taxes, equals the amount invoiced or otherwise due.

7. **Term and Termination**.

7.1. <u>Term</u>. Subject to the termination rights set forth in the Agreement, Licensee's right to access and use the Programs and Services shall remain in effect for the initial term (and any renewal term) set forth in the Order Form. If (i) no initial term is set forth on the Order Form, then the initial term shall be the period commencing on the Effective Date and ending sixty (60) months from the Effective Date; and, if (ii) no renewal term is set forth on the Order Form, then the initial term shall automatically renew for a similar duration as the initial term. Either party may provide a written notice of non-renewal at least ninety (90) days' prior to the end of the then-current term. Upon receipt of such notice, the Agreement shall terminate on the completion of the then-current term.

7.2. <u>Termination for Cause</u>. Either party may terminate the Agreement: (i) at any time upon sixty (60) days prior written notice, if the other party commits a material breach of this Agreement that remains uncured after sixty (60) days' written notice specifying the nature of the breach and identifying the measures required to correct the breach; (ii) to comply with any order issued or proposed to be issued by any governmental agency or court or with any provision of law or regulation; or (iii) if the other Party is involved in a violation of federal or state law or is excluded from participation in a federal or state health care program.

7.3. <u>Termination Rights</u>.

7.3.1 Either Party may terminate the Agreement immediately if the other party: (i) becomes insolvent, files for, or is subject to, bankruptcy, or comparable proceeding; or (ii) exposes such party to civil or criminal liability.

7.3.2 CureMD may terminate the Agreement immediately if (i): Licensee or its employees violate Section 2; (ii) uses obscene, offensive, threatening, or malicious language with such party's employees, officers, contractors, or agents; or (iii) there is any wrongful or unauthorized access to, or use of, the Programs or Services by Licensee or any other third party.

7.4. <u>Audit</u>. CureMD shall have the right to monitor utilization of the Programs and Services by the Licensee. If CureMD determines that Licensee's use of the Programs and Services is above what is being invoiced for based on the representations of the Licensee, the Licensee will be responsible for additional applicable fees in accordance with this agreement retrospectively.

7.5. <u>Effect of Termination</u>.

7.5.1 Upon termination of the Agreement: (i) access to and use of the Software and Services shall be terminated; (ii) Licensee will immediately pay to CureMD all amounts due hereunder for all services rendered or agreed upon through the date of termination; and (iii) return and deliver to CureMD all CureMD Information and

Materials and CureMD Confidential Information.

    7.5.2   Termination of the Agreement shall not (i) relieve the Licensee from any liability that may have arisen prior to such termination; and (ii) limit either party from pursuing other remedies available to it, including injunctive relief.

7.6.   <u>Early Termination</u>. In case Licensee requests termination prior to the completion of the initial term, or any renewal term, Licensee shall be liable for all past due payments along with a $5,000 one-time cancellation fee per provider and $100 per provider per month for the remaining months of the then current term, to cover internal and third party costs incurred by CureMD.

8.   **Licensee Data**.

8.1.   Licensee represents and warrants to CureMD that (i) all data it provides to CureMD or that it selects in Programs and Services is accurate, complete and appropriate, and in conformity with all legal requirements; (ii) its medical records appropriately support all codes that it enters, selects or approves; (iii) it and its personnel are duly authorized and qualified to enter and access such data; (iv) Licensee's access, use and disclosure of the Licensee Data complies with applicable federal, state and local laws and regulations; and (v) the Licensee Data does not infringe the intellectual property rights of any third party.

8.2.   CureMD is not a health plan or healthcare provider and it cannot and does not independently review or verify the medical accuracy or completeness of the medical information entered into, or made available through, the Programs and Services. Use of and access to Programs and Services, including, but not limited to, clinical information in Programs and Services, is at the sole risk and responsibility of Licensee and any practitioner or health care provider or facility. CureMD shall not be liable for any action or inaction of Licensee which may give rise to liability under the federal False Claims Act or any state version thereof.

8.3.   The Licensee shall be solely responsible for affording individuals their rights with respect to the Licensee Data, such as the rights of access and amendment.

8.4.   CureMD agrees to maintain the security of Licensee Data using industry-standard data security protocols, and other methods reasonably deemed to be adequate for secure business data. CureMD shall employ commercially reasonable precautions to prevent the loss of or alteration to Licensee Data, but CureMD does not guarantee against any such loss or alteration. The Licensee acknowledges that, while the Programs and Services will contain certain technical safeguards against misuse of the Programs and Services, it will rely to a substantial extent on the representations and undertakings of the Licensee and its workforce. CureMD is not and will not be, Licensee's official record keeper.

8.5.   As between the parties, Licensee is the owner of all Licensee Data and all rights, title and interest therein, is and shall remain the exclusive property of Licensee; provided, however, that nothing herein shall prevent CureMD from using or disclosing such Licensee Data as may be required by law, or as otherwise permitted in this Agreement, including, without limitation, the Business Associate Addendum available at <u>www.curemd.com/LSA-BAA.pdf</u>.

8.6.   Without limiting the foregoing, insofar as Licensee possesses the legal authority to do so, Licensee hereby authorizes CureMD and Third Party Service providers to use de-identified Licensee Data in any form or format, for data benchmarking, sharing, warehousing, resource utilization and similar data analysis services, insofar as such Licensee Data may be lawfully used for such purposes; provided, however, that CureMD shall protect and maintain the confidentiality of all patient data. All de-identified information created by CureMD in compliance with the Agreement will belong exclusively to CureMD, provided that Licensee will not hereby be prevented from itself creating and using its own de-identified information.

9.   **Return of Data**. Upon termination, at the Licensee's request and expense, CureMD shall make the copy of the Licensee Data available to the Licensee. Licensee must request Licensee Data within three (3) months of termination or expiration of this Agreement by paying the then applicable data extraction fees to CureMD. Upon any termination of the Agreement, CureMD shall have the right to maintain a copy of all Licensee Data in accordance with, and for the period of time it determines is

required or permitted by, applicable law including HIPAA. The sole liability and responsibility as to the Licensee Data, including patient records, rests with the Licensee.

10. **Data Migration Services**.

10.1. Data for Data Import. Licensee understands that the quality of Licensee Data available in the Programs and Services depends on the quality of the data provided by the Licensee. CureMD is not responsible for: (i) the inability to perform or access data migration services due to improperly formatted or corrupt files, viruses on media provided, or incompatible backup media or software; (ii) any problems arising from third party software installed on the Licensee's hardware by CureMD's technicians, the Licensee, or other third party; (iii) lost data due to hardware failure, virus, spyware, corruption or any other situation; and (iv) the inability to access, or the delay in accessing, the Licensee Data due to Licensee's previous or pre-existing vendor or third party service provider.

10.2. Representations. CureMD does not make any representation concerning: (i) estimated completion dates, hours, or fees to provide the data migration services; (ii) performance or function of any product or system; (iii) the experiences or recommendations of other parties; or (iv) the results or savings the Licensee may achieve.

10.3. Licensee Obligations. The Licensee agrees to (a) provide all Licensee Data in an industry standard format regularly used by CureMD in the ordinary course of business; (b) designate an technically qualified authorized representative; (c) fully back up and secure all programs and data, including Licensee Data, residing on the Licensee's system prior to the performance of data migration services; (d) provide CureMD with necessary hardware / software and access to the Licensee's servers and/or their premises; (e) identify the format and media on which migrated data will be delivered; (f) refrain from entering new data during the performance of data migration services; (g) create a recovery plan to be followed in the event of any unforeseeable problems; and (h) execute the Licensee's test plan to ensure data integrity after completion of the data migration.

10.4. Data Migration Limitations. Licensee acknowledges that transferring Licensee Data in connection with the use of the Programs or Services is subject to the possibility of human and mechanical errors, omissions, and losses, including inadvertent loss of data, non-availability of technical support staff, incompatibilities in data formats, already-corrupted data, or damage to media that may give rise to loss or damage. Licensee is responsible to adopt reasonable measures to limit the impact of such problems. The Licensee acknowledges and agrees that the migration will be at its sole and exclusive risk and CureMD is not responsible for incorrect, missing, lost or corrupted data, installation, de-installation, use of, or inability to use the Licensee's computer equipment, hardware, peripherals, database, or the network as a result of the data migration services.

11. **Indemnity by CureMD**.

11.1. Indemnification. CureMD shall, subject to the limitations on its liability set forth in this Agreement, indemnify, defend, and hold harmless Licensee from and against any action against Licensee to the extent that it is based solely on a claim that the use of the Software by Licensee has infringed an intellectual property right and the use of such program in such manner is prohibited by a court of competent jurisdiction (an "IP Claim"), or directly attributable to CureMD's gross negligence or willful misconduct (a "Negligence Claim", and together with IP Claim, each a "Claim").

11.2. Requirements. The indemnification obligations set forth in this section are subject to the following conditions: (i) Licensee shall give CureMD prompt written notice of any Claim within ten (10) business days of the receipt of the Claim; (ii) Licensee shall give CureMD the sole right to control and direct the investigation, defense, and settlement of the Claim; and (iii) Licensee shall reasonably cooperate with CureMD in the investigation, defense, and settlement of the Claim. Licensee further agrees to provide CureMD with available information and/or employees as CureMD may reasonably request in defending a Claim. Licensee shall not settle or compromise any Claim, and any such settlement or compromise shall be void as against CureMD and shall terminate CureMD's obligation to indemnify Licensee with respect to such Claim.

11.3. Exclusions. CureMD shall have no obligation to the extent a Claim is based upon: (i) use of any version of Programs or Services which are altered by, or at the request of Licensee, if infringement would have been avoided by a current, unaltered version; (ii) combination, operation, or use of the Program or Services with software and/or

hardware not delivered by CureMD, if such infringement could have been avoided by not combining, operating, or using the program with such software and/or hardware; or (iii) infringement of intellectual property rights attributable to input of Licensee Data on the Programs or Services.

11.4. <u>Remedial Measures</u>. If the Software becomes, or may become, the subject of an IP Claim, then CureMD may, at its own expense and option: (i) procure for Licensee the right to continue use of the Software at no additional cost to Licensee for such right; (ii) replace the Software with a non-infringing product; (iii) modify the Software so that it becomes non-infringing; or (iv) immediately terminate Licensee's license to such Software. In the event of termination, CureMD shall have no liability to Licensee or any party concerning their use of such Software except to refund to Licensee a pro rata portion of the Subscription Fees, actually paid to CureMD.

11.5. <u>Exclusive Remedy</u>. THE FOREGOING STATES CUREMD'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY INFRINGEMENT, ALLEGED INFRINGEMENT, MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY BY THE PROGRAMS OR SERVICES OR ANY PART THEREOF, OR DIRECTLY ATTRIBUTABLE TO CUREMD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

CureMD's indemnification obligations under this section shall not apply in the event that any of the losses are covered by Licensee's indemnification obligations set forth under this Agreement.

12. **Indemnity by Licensee**. The Licensee agrees to indemnify, defend and hold harmless CureMD, and Third Party Service providers to the fullest extent permitted by applicable laws and regulations, from and against any claims, losses, damages (including but not limited to compensatory, consequential, special and punitive damages), demands, costs, penalties, injuries, interest, or expenses (including without limitation reasonable attorney fees and costs) in connection with the Licensee's or its employees', officers', directors', agents' and / or contractors': (i) use of the Programs and Services, and all information contained therein, including Licensee Data; (ii) act, omission (negligent, willful or otherwise) or breach of any term of this Agreement; (iii) any personal injury or death sustained by an individual or any third party, alleged or otherwise; (iv) violation of federal, state or local laws, rules or regulations; (v) use of Programs and Services not in strict conformance with Documentation, workflows or functionality built into the Programs; (vi) provision of professional services, including medical treatment, diagnosis or prescription; (vii) the completeness or lack thereof of prescription benefit or medication history information; (viii) improper use, or infringement, of Third Party Services; (ix) suspension, termination or change of the Licensee's access to Programs and Services; and (x) any errors or inaccuracies contained in the Licensee Data as delivered by Licensee to CureMD.

13. **Warranty and Remedies**.
    13.1. <u>Software Warranty</u>. Subject to Licensee's compliance with this Agreement, CureMD represents and warrants that the Software will be free from material errors. This warranty shall apply for a period of thirty (30) days from the Effective Date. Any error not reported within such period will be deemed waived and accepted by Licensee.

    13.2. <u>Data Migration Warranty</u>. Subject to Section 10 and Licensee's compliance with this Agreement, CureMD represents and warrants that the migration of data by CureMD will conform in all material respects with the written documentation provided by CureMD. This warranty shall apply until the earlier of (i) the expiration of five (5) business days from the date the data at issue is imported, or (ii) the date the database is first altered in any way by the Licensee. Any non-conformance not reported within such period will be deemed waived and accepted by Licensee.

    13.3. <u>Other Services Warranty</u>. CureMD warrants that the Support Services, the Implementation Services and any other service set forth in an Order Form agreed to by Licensee (excluding services contemplated by Software Warranty and Data Migration Warranty) will be performed in a manner that is consistent with generally accepted industry standards for such Service. With respect to Implementation Services, CureMD does not guarantee any specific results, and the results Licensee may realize is primarily dependent on Licensee's ability to utilize and implement ideas, concepts, and practices presented in the Implementation Services. Any non-conformance not reported to CureMD by Licensee within ten (10) days of its discovery will be deemed waived and accepted by Licensee.

    13.4. <u>Exclusive Remedies</u>. For any breach of the warranties contained herein, Licensee's exclusive remedy, and CureMD's

entire liability, shall be as follows:

13.4.1   With respect to a breach of warranty set forth in 13.1, upon verification of the error, CureMD shall correct the error that caused CureMD to breach its warranty to Licensee.

13.4.2   With respect to a breach of warranty set forth in 13.2, upon verification of the error, CureMD shall, at its option, correct the database.

13.4.3   With respect to a breach of warranty set forth in 13.3, CureMD shall, at its option, re-perform the applicable Service.

14.   **Disclaimer**. THE WARRANTIES SET FORTH IN SECTION 13 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USABILITY, CONDITION OR OPERATION THEREOF, TITLE, COMPATIBILITY, SECURITY, ACCURACY, AVAILABILITY, TIMELINESS, COMPLETENESS, ADEQUACY AND NONINFRINGEMENT OR WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE, AND LICENSEE WARRANTS THAT IT HAS NOT RELIED ON ANY REPRESENTATIONS, WARRANTIES, OR STATEMENTS OF FACT NOT SPECIFICALLY INCLUDED IN THIS AGREEMENT. LICENSEE ACKNOWLEDGES THAT THE PROGRAMS AND SERVICES ARE PROVIDED "AS IS" AND 'AS AVAILABLE'.

CUREMD, OR ITS THIRD PARTY SERVICE PROVIDERS, DO NOT WARRANT THAT THE PROGRAMS OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, FAULT-FREE, AND FREE OF VIRUSES OR ANY OTHER MALICIOUS CODE OR THAT ALL ERRORS WILL BE CORRECTED.

EXCEPT AS SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL CUREMD, OR ITS THIRD PARTY SERVICE PROVIDERS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF REVENUE, LOSS OF DATA, LOSS OF GOODWILL, OR LOSS OF USE, OR ANY OTHER FINANCIAL CLAIM FOR DAMAGES, HARDSHIP, OR FAILURE OF DELIVERY, THE COST OF DELAY, PROCUREMENT OF SUBSTITUTE ITEMS OR SERVICES, ALTERATION, THEFT, DESTRUCTION OR CORRUPTION OF DATA, ANY INABILITY TO RECORD, ACCESS OR RESTORE DATA, INCORRECT REPORTS, OR INCORRECT DATA FILES RESULTING FROM PROGRAMMING ERROR, OPERATOR ERROR, EQUIPMENT OR SOFTWARE MALFUNCTION, OR THE USE OF PROGRAMS OR SERVICES OR FROM INCREASED EXPENSES OR COSTS, FORESEEABLE OR UNFORESEEABLE, OR COST OF COVER SUFFERED BY THE LICENSEE OR BY ANY THIRD PARTY, WHETHER IN AN ACTION IN BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR TORT OR ANY OTHER THEORY OF LIABILITY, AND EVEN IF THE PARTY HAS BEEN ADVISED OF OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

CUREMD ASSUMES NO LIABILITY FOR THE CONSEQUENCES TO THE LICENSEE OR ITS PATIENTS ARISING OUT OF OR RELATING TO THE LICENSEE'S USE OF THE PROGRAMS OR SERVICES. THE LICENSEE ACKNOWLEDGES THAT CUREMD HAS NO CONTROL OF OR RESPONSIBILITY FOR THE LICENSEE'S USE OF THE PROGRAMS OR SERVICES OR THE CONTENT PROVIDED THEREON AND HAS NO LIABILITY TO ANY PERSON FOR ANY DATA OR INFORMATION INPUT ON THE SERVICE BY THE LICENSEE TO THE SERVICE.

CUREMD DISCLAIMS ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICES.

15.   **Limitation of Liability**. CureMD's cumulative, aggregate total liability in any way or in any degree under the Agreement shall in no event exceed an amount equal to three (3) times the average monthly subscription fee paid by Licensee to CureMD under the Agreement. Licensee hereby acknowledges that the remedies set forth above are reasonable and will not fail of their essential purpose.

This section sets forth the full extent of CureMD's liability for damages resulting from this Agreement and the Programs and Services, regardless of the form in which such liability of claim for damages may be asserted. The provisions of the Agreement allocate the risks between CureMD and Licensee. The parties agree that CureMD's pricing and other terms and conditions of the Agreement reflect the allocation of risk and the limitation of liability specified herein, and Licensee acknowledges that

without such limitation on liability CureMD would not have entered into this Agreement.

16. **Service Level Guarantee**. CureMD guarantees to have the Licensee's access available through internet access 99% of the time in any given month. In the event that the Licensee's access is not available for 99%, CureMD will credit the following month's Subscription Fee as follows:

Monthly Uptime Percentage	Credit
95% to 98.9%	10%
90% to 94.9%	20%
89.9% or below	50%

Such credit shall be retroactive and calculated against 24 hours a day in a calendar month. In order for the Licensee to receive a credit on the Licensee's account, the Licensee must request such credit within seven (7) days after the Licensee experienced the down time by sending an e-mail to support@curemd.com. The body of the message must contain the Licensee's account number, the dates and times of the unavailability, Licensee identification requested by CureMD and sufficient detail for CureMD to validate the unavailability. Credits will usually be applied within sixty (60) days of the Licensee's credit request. This Service Level Guarantees and credits are subject to Force Majeure Clause hereof, as well as availability of Software and access capability at the time of outage. This guarantee applies to Licensees in good financial standing with CureMD at the time of a service outage. CureMD retains sole discretionary power when determining whether or not this guarantee has been met.

The issuance of credits to the Licensee hereunder shall be the Licensee's sole and exclusive remedy for any claim and the Licensee hereby waive the right of any action, legal or otherwise, against CureMD by accepting the applicability of the service level credits to any claims the Licensee might have relating to the quality of service hereunder.

17. **Support**. Subject to Licensee's compliance with this Agreement, CureMD will provide telephone and online Support Services during business hours, which are 7:00 a.m. to 8:00 p.m. Eastern Standard Time, Monday through Friday, excluding holidays (the "Business Hours"). Extended Support Services shall be available at the request of the Licensee at the rate of $250 per two hours slots. CureMD is not responsible for issues related to Licensee's computer or internal / external network.

18. **Implementation and Data Migration Services; Abandonment**.
    18.1.   Trainings provided are billed at a standard rate for each day. If the number of hours required for Implementation Services during a calendar day exceeds 8 hours, each hour will be billed at then-current after-hours consulting rates. For on-site training, Licensee shall be responsible for all travel, boarding and lodging and reasonable business expenses.

    18.2.   All Implementation Services and data migration services must be utilized by Licensee within 90 days from the date on the Order Form, unless extended through mutual agreement of the Parties. Failure to utilize these services within such period, will result in these services being considered as delivered and no refund or other compensation shall be issued by CureMD (except in those cases where the failure to utilize or provide such services is a result of CureMD's negligence or wilful misconduct).

    18.3.   As part of Implementation Services, Licensee hereby authorizes CureMD to complete and execute any electronic signatures on behalf of Licensee for the sole purpose of facilitating electronic data interchange ("EDI") between Licensee and payors. In addition, Licensee hereby ratifies any prior electronic signatures executed by CureMD on behalf of Licensee for the sole purpose of EDI. Licensee represents and warrants that it has the actual authority to permit CureMD to complete and execute such EDI submissions on behalf of Licensee.

    18.4.   The Licenses shall notify CureMD if due to reasons of infirmity or sickness the Licensee, or any Provider, is unable to continue the use of the Programs and Services. Upon the request of the Licensee, and at CureMD's sole discretion, CureMD may place the Licensee's account on hold for a maximum period of six (6) months.

    18.5.   In the event Licensee due to inactivity or unresponsiveness fails to communicate with CureMD for a period of six

(6) months, the Licensee shall be considered dormant and automatically released from this Agreement. All payments made by the Licensee shall be forfeited. Licensee shall be responsible for all fees incurred. Licensee may resume access to the Programs and Services subject to applicable charges.

19. **Data Storage**. Unless otherwise set forth on an Order Form, each Provider is allowed 10 gigabytes of Data Storage. Additional Data Storage will be billed at in increments of $10 per 10 gigabytes per provider per month.

20. **Third Party Services**.

    20.1.   Third Party Terms. The Programs and Services include sub-licensed third party software and services which may be used solely with, or as part of, the Programs and Services and for no other purpose. The terms applicable to the Licensee's access and use of such software and services are set forth in the Third Party Terms available at www.curemd.com/LSA-ThirdPartyTerms.pdf.

    Notwithstanding the foregoing, such third party software and services may, in addition to the terms and conditions set forth herein, require the Licensee to enter into separate agreements with the respective third party vendors. The Licensee agrees to execute such agreements as may be required for the use of such third party software or services.

    20.2.   Disclaimer. CureMD uses unrelated third parties to provide the Third Party Services, and the availability and accuracy of such Third Party Services is not within CureMD's control. Licensee hereby waives any and all claims which Licensee may have against CureMD in connection with the Third Party Services and CureMD waives all liability directly caused by the negligence, conduct or misconduct of Third Party Services. The Licensee understands and acknowledges that the provision of Third Party Services is dependent on continuing contractual relationship between CureMD and Third Party Service providers.

    20.3.   Sublicense. As applicable in connection with Programs or Services, CureMD hereby grants to Licensee a limited, non-exclusive, non-transferable, non-sublicensable and royalty-free sublicense to the Third Party Services subject to the Third Party Terms. CureMD reserves the right to modify the Third Party Terms in the event CureMD adds or replaces Third Party Services or as required in connection with changes to the third party license agreements for Third Party Services. CureMD agrees to use commercially reasonable efforts to post the current Third Party Terms on Software and notify Licensee through an alert on Software when CureMD has posted revised Third Party Terms. All sublicenses granted hereunder are solely for Licensee's use in connection with Programs or Services and will terminate on the earlier of expiration or termination of (i) this Agreement or (ii) the applicable agreement between CureMD and Third Party Service provider.

    20.4.   Third Party Beneficiaries. Providers of Third Party Services shall be third party beneficiaries to this Agreement with respect to the services provided to Licensee.

21. **Confidential Information**. All Confidential Information disclosed hereunder will remain the exclusive and confidential property of disclosing party ("Disclosing Party"). The receiving party ("Receiving Party") will not disclose the Confidential Information of Disclosing Party except for the provision or utilization of the Programs and Services and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of Disclosing Party as it uses with respect to its own confidential information, but in no case less than reasonable care and shall, in addition, take such actions as are required under this Agreement or shall be reasonably specified by Disclosing Party in a written notice to the Receiving Party. Receiving Party will limit access of Confidential Information to its affiliates, employees and authorized representatives with a need to know and will enter into confidentiality agreements with terms similar to those mentioned in this section. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information of Disclosing Party to the extent necessary (i) to comply with any law, rule, regulation, or ruling applicable to it, including any applicable freedom of information acts or sunshine acts, and (ii) to respond to any summons or subpoena or in connection with any litigation; provided that, immediately upon receiving any such request and to the extent that it may legally do so, Receiving Party advises Disclosing Party of the request prior to making such disclosure in order that Disclosing Party may interpose an objection to such disclosure, seek an appropriate protective order, or take any other action it deems appropriate to protect the Confidential Information. The parties acknowledge that this Agreement is subject to all applicable federal, state, and local laws and regulations, including those related to freedom of information and sunshine acts, as applicable to the Licensee.

Upon the request of Disclosing Party, Receiving Party shall return or destroy all Confidential Information, including copies within ten (10) days of such request. If the Receiving Party is unable to destroy any such Confidential Information, it must remove any part containing references to the Confidential Information. Receiving Party shall provide a written certificate to Disclosing Party regarding destruction or return within ten (10) days thereafter.

Nothing contained herein shall be construed as granting or conferring any rights, license or otherwise in any Confidential Information. Confidential Information may pertain to prospective or unannounced products. Licensee agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product/service.

Receiving Party agrees that Disclosing Party will suffer irreparable harm if Receiving Party fails to comply with its obligations set forth in this Section 21, and that monetary damages will be inadequate to compensate Disclosing Party for any such breach. Accordingly, Receiving Party agrees that Disclosing Party will, in addition to any other remedies available at law or in equity, be entitled to the issuance of injunctive relief to enforce the provisions hereof as well as seek specific performance, immediately and without the necessity of posting a bond.

22. **Trademarks and Publicity**. Except for linking to CureMD websites, Licensee may not use any CureMD logo or trademark, whether or not such mark are registered, in any form whatsoever without prior written approval from CureMD. CureMD may publicly refer to the Licensee, orally and in writing, as a customer of CureMD and may also use Licensee's trademark or logo for this purpose. Any other reference to Licensee by CureMD requires the written consent of Licensee.

23. **Governing Law and Dispute Resolution**. The Agreement will be governed by the laws of the State of New York, unless the Licensee is a public entity that is prohibited by local laws or regulations from agreeing to out-of-state jurisdiction or laws. In such cases, the Agreement will be governed by the laws of the jurisdiction where the public entity is located ("Preferred Jurisdiction"). Any controversy or claim arising out of or relating to the Agreement or breach thereof, with the sole exception of Licensee invoice disputes which are governed by Section 6.4, shall be submitted to the following procedure: (i) direct negotiation in a settlement conference to be scheduled as soon as possible after the dispute arises; (ii) if no resolution is reached within sixty (60) days of the settlement conference, the parties will submit the dispute to non-binding mediation in the Preferred Jurisdiction, under the mediation rules of the American Arbitration Association; and (iii) if no settlement is reached within sixty (60) days of the start of mediation, either party may seek legal redress in the federal and state courts located in the Preferred Jurisdiction.

24. **Insurance**. The Licensee shall obtain and maintain such policies of, general liability, errors and omissions, and professional liability insurance with reputable insurance companies as is usually carried by persons engaged in the Licensee's business covering the duration of this Agreement. Such insurance shall be in amounts no less than One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) in the annual aggregate.

25. **Notices**. Licensee agrees to notify CureMD of any changes to Licensee's business address, business contact, and support contact within ten (10) days of any change thereto. All notices required or permitted hereunder shall be given in writing or as specifically set forth in the applicable section of the Agreement.

26. **U.S. Government**. The Software and accompanying documentation are commercial computer software and documentation developed exclusively at private expense and in all respects are proprietary data belonging to CureMD. If the Software and accompanying documentation are used under the terms of a DoD or civilian agency contract, the use, reproduction and disclosure of such software and documentation by the Government is subject to the restrictions set forth in the Agreement in accordance with 48 C.F.R. 227.7202 or 48 C.F.R. 12.212, respectively.

27. **Non-solicitation**. During the term of the Agreement and for twelve (12) months thereafter, neither party shall, alone or in association with others, solicit any employee or contractor of the other party to terminate its employment or contracting relationship with the other party or its subsidiaries. Nothing herein shall preclude either party from hiring employees or contractors of the other party to the extent such employees or contractors respond, without any solicitation by or on behalf of the hiring party, to advertisements or job openings published or otherwise made generally available to the public by the hiring party.

28. **Misc. / General**.

28.1.   Time-Bar. Except for actions for nonpayment or breach of CureMD's proprietary rights in the Software, no action, regardless of form, arising out of the Agreement may be brought by either party more than six months after the cause of action has accrued.

28.2.   Call Monitor and Recording. Licensee acknowledges and agrees that calls to and from CureMD may be monitored or recorded.

28.3.   Legal Advice. Licensee's use of the Programs or Services, or any CureMD Information and Materials, templates, Documentation, forms or other documents made available to Licensee in no way constitutes the provision of legal advice from CureMD to Licensee.

28.4.   Waiver. The waiver by either party of any default or breach of the Agreement shall not constitute a waiver of any other, or subsequent, default or breach.

28.5.   Entire Agreement. The Agreement, any Order Form along with exhibits constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of the Agreement. Any representations, promises or inducements oral or written not embodied in this Agreement, must be in writing and signed as part of an Addendum to this Agreement.

28.6.   Assignment. CureMD may assign this Agreement or any rights or obligations under the Agreement to a third party. Except as provided for hereunder, Licensee may not assign the Agreement or any rights or obligations hereunder without the prior written consent of CureMD; any such assignment without the prior consent of CureMD shall be void. CureMD may use subcontractors to perform Services under this Agreement; provided, however, that such subcontracting shall not relieve CureMD from responsibility for performance of its duties hereunder.

28.7.   Third Party Beneficiaries. Except as provided for under this Agreement, CureMD has no obligation to any third party by virtue of this Agreement, including any patient of any Licensee.

28.8.   Severability. If any of the provisions of the Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the fullest extent possible, the economic, business and other purposes of the Agreement.

28.9.   Survival. Licensee's rights under this Agreement will terminate automatically if Licensee breaches any terms of this Agreement. All sections that contemplate survival will survive any termination of this Agreement.

28.10.   Modification. Notwithstanding the provisions of Section 20.3, CureMD may modify or amend the terms and pricing of the Agreement or any incorporated Order Form, upon written notice, e-mail or otherwise, to Licensee. Following any such notification, Licensee shall have the right for a period of thirty (30) days from receipt to inform CureMD in writing that it does not accept the modification or amendment of the Agreement. If Licensee does not notify CureMD in writing that it does not accept such modification or amendment within such thirty (30) day period, and continues to access and use the Software and/or receive the Services, this shall be deemed agreement by the Licensee to the modification or amendment. If Licensee properly notifies CureMD that it does not accept the new terms within the thirty (30) day period, then Licensee may continue to access and use the Programs and Services until the end of Licensee's then-current term, at which time the Agreement, and Licensee's access to and use of the Software and its receipt of Services shall terminate.

28.11.   Force Majeure. Neither party is liable under this Agreement for non-performance caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or nature, strikes or other labor disputes, riots, or other acts of civil disorder or any other events, conditions or causes beyond such party's reasonable control.

28.12.   Electronic Signature. Licensee expressly agrees not to contest the validity of any electronic signature because the signature is performed electronically.

29. **Additional Products / Services Addenda**. Additional Products / Services may subject to the acceptance of additional terms

and conditions by the Licensee. The below table lists the terms and conditions governing the use and access of the respective Additional Products / Services.

Exhibit	Link
Revenue Cycle Management	www.curemd.com/LSA-RCM.pdf
CureConfirm	www.curemd.com/LSA-CureConfirm.pdf
E-Fax	www.curemd.com/LSA-E-Fax.pdf
Medical Transcription	www.curemd.com/LSA-MedicalTranscriptionServices.pdf
Chronic Care Management	www.curemd.com/LSA-CCMServices.pdf
Credential Services	www.curemd.com/LSA-Credentialing.pdf