



**USE OF THE SOFTWARE IS NOT APPROPRIATE FOR EMERGENCIES. IF THERE IS AN EMERGENCY CALL 911 OR GO TO THE NEAREST CLINIC OR EMERGENCY ROOM.**

**PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY. THIS IS A LEGALLY BINDING AGREEMENT APPLICABLE TO YOU AS A USER OF THE SOFTWARE.**

**IF YOU HAVE NOT READ THE AGREEMENT, DO NOT UNDERSTAND OR AGREE TO BE BOUND BY THE AGREEMENT, OR ARE NOT ABLE TO CONSENT TO BE BOUND BY THE AGREEMENT, THEN DO NOT USE THE SOFTWARE.**

### **License and Services Agreement**

**This License and Services Agreement** ("Agreement") is entered into between CureMD.com, Inc. ("CureMD"), and the individual or entity using or accessing the Programs and Services (as defined below) ("Licensee"). By subscribing for access to, and use of, the Programs and Services 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. "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 Programs and 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.
  - 1.2. "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.
  - 1.3. "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.
  - 1.4. "HIPAA" means Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.
  - 1.5. "Implementation Services" means onboarding, training and other consulting services that may be provided by CureMD to the Licensee, as identified on an Order Form.
  - 1.6. "Licensee Data" means all information, opinions, messages, comments, photos, videos, graphics, sounds and other content or material that is submitted, uploaded, posted or otherwise made available on or through the Software. For the avoidance of doubt, the term "Licensee Data" does not include any information that has been properly de-identified as contemplated by Section 8.7 hereof.
  - 1.7. "Order Form" means any applicable 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.
  - 1.8. "Programs and / or Services" means the Software, Services and / or Third Party Services.
  - 1.9. "Services" means Implementation Services, Third Party Services and any other service purchased by Licensee (whether identified on an Order Form or otherwise contemplated by this Agreement).
  - 1.10. "Software" means the CureMD Telemedicine Solution.



- 1.11. "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.
- 1.12. "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.

## 2. **Software; Right to Use Programs and Services.**

- 2.1. **Software.** The Software is designed to support, not replace or intervene in, the relationship that exists between a patient and the health care provider. The Software is not intended for use by health care providers and patients in connection with active patient monitoring so as to allow immediate clinical action or continuous monitoring by a health care provider or the patient.
- 2.2. **License.** During the term of this Agreement, CureMD grants to Licensee a non-exclusive, non-transferable, limited user based license for Licensee to access and use the Programs and Services set forth in the Order Form ("User License"). Licensee shall access the Programs and Services solely for Licensee's own purposes from within the United States of America or any U.S. territory. If the Licensee accesses or uses the Programs or Services from outside of the United States, they do so at their own risk and are responsible for compliance with the laws of the applicable jurisdiction.

Licensee shall only access and use the Programs and Services for healthcare purposes and in accordance with applicable law. Any violation of this section shall constitute a breach of this Agreement and a theft of the services of CureMD. In such an event, CureMD reserves the right to immediately terminate access to the Software, and take any action it deems appropriate.

- 2.3. **User License.** A User License grants a single individual the right to use a Software. If used within an organization, each User License must be used by one and only one individual person. Any usage of User Licenses across multiple business organizations, or any sharing of a single User License by multiple individual persons, is a violation of this Agreement.
- 2.4. **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.

- 2.5. **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 ACKNOWLEDGES 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.
- 2.6. **Prohibited Uses.** 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 suspend permission to or terminate access or use the Programs and Services immediately if the terms of this Agreement are violated.

- 2.7. **Professional Responsibility.** 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 accepts all risks arising from, and are solely responsible for, the 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.

If Licensee is using the Software to evaluate patients for prescribing of medication, Licensee agrees that it shall practice within the scope of its medical license and that it will comply with all state and federal regulations regarding prescribing medications.

Licensee agrees that the Software is to be used only for interactions with other participants. Licensee is not permitted to keep a videoconference session open while unattended.

- 2.8. **Licensee Responsibilities.** Licensee shall be solely responsible for (i) ensuring that access and use of the Programs and Services is 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 Programs and Services; (iii) obtaining patient consent if required by law and complying with any and all privacy laws applicable to the use of Programs and Services, including HIPAA (iv) safeguarding the confidentiality of Log-In Credentials (defined below) of the Licensee; (v) obtaining access to the internet using software and hardware that meet CureMD's system requirements, including security requirements in accordance with the Documentation; and (vi) obtaining and maintaining all applicable federal, state and local licenses.

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 Licensees; 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 Licensees. Licensee acquires no ownership rights to any Log-In Credentials, and Log-In Credentials may be revoked or changed at any time.

CureMD may send the Log-In Credentials and session invitations via email over the internet. Licensee understands and acknowledges that the internet or email may not be a secure transmission medium, and that third parties may be able to intercept, access, use or corrupt any information that Licensee transmit over the internet.

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 Licensee's access to Programs and Services (i) if the Licensee breaches any term of this Agreement, or unlawfully or inappropriately uses the Service; or (ii) if CureMD reasonably determines that Licensee's use or access adversely affects CureMD or the Programs and Services.

6. **Subscription Fees; Payment.**

6.1. **Subscription Fee.** The Subscription Fees shall be stated in the Order Form. 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 20.10 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 may terminate Licensee's access to the Software until the delinquent Subscription Fees together with administrative late charge are paid to CureMD.

6.4. **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.

6.5. **Taxes.** 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. **Term.** 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. **Termination for Cause.** 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. **Termination Rights.** CureMD may terminate the Agreement immediately if: (a) Licensee becomes insolvent, files for, or is subject to, bankruptcy, or comparable proceeding; (b) Licensee or its employees: (i) uses obscene, offensive, threatening or malicious language with CureMD's employees, officers, contractors or agents; (ii) violates Section 2; or (iii) otherwise exposes CureMD to civil or criminal liability; or (d) there is any wrongful or unauthorized access to, or use of, the Programs or Services by Licensee or any other third party.
- 7.4. **Audit.** 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. **Effect of Termination.**
- 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.

## 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 is 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. 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 [www.curemd.com/LSA-BAA.pdf](http://www.curemd.com/LSA-BAA.pdf).
- 8.6. Protected Health Information, referred to in the Business Associate Addendum, is limited to potential content exchanged by videoconferencing participants during a videoconference.
- 8.7. 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. **Indemnity by Licensee.** The Licensee agrees to indemnify, defend and hold harmless CureMD, and Third Party Service providers 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.
10. **Disclaimer.** CUREMD MAKES NO WARRANTIES REGARDING THE PROGRAMS AND SERVICES, 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, CURRENCY, USEFULNESS, SECURITY, LEGALITY, 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. CUREMD DOES NOT WARRANT THAT THE SERVICE WILL FUNCTION WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, AND DEGRADATION OF QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. LICENSEE ACKNOWLEDGES THAT THE PROGRAMS AND SERVICES ARE PROVIDED "AS IS" AND 'AS AVAILABLE'.

CUREMD SHALL NOT BE LIABLE FOR UNFORESEEN EFFECTS ARISING FROM THE INSTALLATION OR USE OF CUREMD'S SOFTWARE ON LICENSEE'S COMPUTER OR DEVICE.

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 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.

11. **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.

12. **Third Party Services.**

- 12.1. **Third Party Terms.** The Programs and Services may include third party software and services which may be used solely with, or as part of, the Programs and Services and for no other purpose.

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.

- 12.2. **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.

All Third Party Services 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.



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

13. **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 (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, and (ii) as appropriate, 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 or take such other action as it deems appropriate to protect the Confidential Information.

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, 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.

14. **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.
15. **Governing Law and Dispute Resolution.** The Agreement, and all matters arising out of or relating to the Agreement, shall be governed by the laws of the State of New York applicable to contracts made and wholly performed in such state. Any controversy or claim arising out of or relating to the Agreement or breach thereof 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 New York, NY 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 federal and state courts located in Southern District of New York for disputes arising out of this Agreement.
16. **CALEA.** CureMD and/or its Third Party Service provider intends to fully comply with the Communications Assistance for Law Enforcement Act ("CALEA"). By using the Service, Licensee hereby agree and consent to CureMD's and/or its Third Party Service provider's right to disclose the nature and content of Licensee's communications if and as required by CALEA without any further notice to Licensee. If Licensee does not choose to record Licensee's videoconferencing sessions using the recording feature, CureMD and/or its Third Party Service provider will have no access to any of the content of Licensee's videoconferencing communications.





17. **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.
18. **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.
19. **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.
20. **Misc. / General.**
  - 20.1. **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.
  - 20.2. **Call Monitor and Recording.** Licensee acknowledges and agrees that calls to and from CureMD may be monitored or recorded.
  - 20.3. **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.
  - 20.4. **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. All determinations by CureMD under this Agreement and exercise of its rights are made and done in CureMD's sole and absolute discretion.
  - 20.5. **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.
  - 20.6. **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.
  - 20.7. **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.
  - 20.8. **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.
  - 20.9. **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.



- 20.10. Modification. 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 Programs or Software, 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 shall cease using the Programs and Services.
- 20.11. 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.
- 20.12. Electronic Signature. Licensee expressly agrees not to contest the validity of any electronic signature because the signature is performed electronically.