

novelHealth Marketplace Services Agreement

BY ACCEPTING OR BY DOWNLOADING, ACCESSING OR OTHERWISE USING THE SERVICES, YOU ACKNOWLEDGE AND AGREE TO THE BELOW SUCH TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THESE TERMS, THEN DO NOT ACCESS AND USE THE SERVICES.

This novelHealth Marketplace Services Agreement (“**Agreement**”) is entered into between CureMD.com, Inc. on behalf of itself or its corporate affiliates (“**CureMD**”), and the individual or entity using the Services (*defined below*) (“**Licensee**”). The Licensee includes Authorized Users (*defined below*).

1. **Definitions.**

- 1.1. “**Authorized Users**” mean those healthcare providers, employees, agents and independent contractors of the Licensee who access and use the Services using Log-In Credentials.
- 1.2. “**Confidential Information**” means the terms of this Agreement, Documentation, CureMD Information and Materials, all confidential and business proprietary information of CureMD or Third Party Service provider disclosed in in relation to this Agreement; 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; or (iii) is lawfully disclosed to the Licensee by a third party without restriction on disclosure.
- 1.3. “**CureMD Information and Materials**” means all 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.
- 1.4. “**Site**” means <https://www.novelhealth.ai> or any partner or affiliated websites owned and operated by CureMD.
- 1.5. “**Customers**” mean the users who have access and use the Services using Log-In Credentials and have consented to CureMD’s terms of use (by clicking through the terms of use or using the Site or end-user-facing aspects of the Services).
- 1.6. “**Documentation**” means user and technical manuals, training and other documentation describing the Services features, functionalities, requirements and specifications as may be changed and communicated to the Licensee via the Programs and Services.
- 1.7. “**HIPAA**” means Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recover and Reinvestment Act of 2009 (the “HITECH Act”), and as set forth in their respective implementing regulations.
- 1.8. “**Implementation Services**” means on-boarding, training and other consulting services that may be provided by CureMD to the Licensee.
- 1.9. “**Licensee Data**” means all information entered by Licensee into or through the Services.
- 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 Services.
- 1.11. “**Services**” means the Software, Third Party Services, and services provided by CureMD through the Site as further described in this Agreement.
- 1.12. “**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 accesses and uses.

- 1.13. “**Subscription Fee**” means the fee for subscribing to the Services as set forth in the Order Form inclusive of fees which may include other services offered.
- 1.14. “**Support Services**” means those support services provided by CureMD pursuant to Section 21.
- 1.15. “**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. **Services.** Services, including services offered the Site, shall include but not be limited to:
 - 2.1. hosting Licensee profile web pages, and marketing Licensee and their services on the Site;
 - 2.2. on-demand and future health care appointment booking services;
 - 2.3. patient on-boarding through various means including, but not limited to, bulk text and email messaging, reminders, patient portal, to notify patients about Services and various patient-facing services, including but not limited to, educational or commercial information including news, products and services (“Patient-Facing Services”);
 - 2.4. staff training, account management services, and online payment services.
3. **Right to Use Services.** During the term of this Agreement, CureMD grants to Licensee a non-exclusive, non-transferable, limited license to access and use the Services. Licensee shall access the 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 Services for healthcare purposes and in accordance with applicable law.
 - 3.1. **Use of Services.** The Licensee acknowledges that the continued integrity of the Services and CureMD’s performance of its obligations described in this Agreement are dependent upon Licensee’s use of the Services in accordance with this Agreement and the Documentation.
 - 3.2. **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 Services or any source code, underlying ideas or algorithms, software or system thereto; (ii) alter, encumber, transfer, sell or lease the Services, or any Confidential Information, to any third party; (iii) allow any third party or unauthorized party to access or use the Services for any purpose; (iv) access or use the 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 Services’ copyright notices, trademarks or other proprietary rights notices affixed to or provided as part of the Services; (vi) compromise the security or integrity of any data, equipment, software, or system input or output of the Services; (vii) use, reproduce, publish, or distribute content in connection with the 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 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 Services not in accordance with this Agreement is strictly prohibited.



4. **Licensee Responsibilities.** Licensee shall be solely responsible for (i) ensuring that its access and use of the 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 to protect the confidentiality, integrity and availability of Customer Information, Log-In Information, and CureMD Confidential Information, and to prevent such information from improper use and disclosure, and securing its hardware, environment and software; (iii) safeguarding the confidentiality of Log-In Credentials (*defined below*); (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.
5. **Log-In Credentials; Account.** CureMD shall provide user account names and / or passwords (“**Log-In Credentials**”) for the Licensee to use the Services, including uploading, reviewing, and updating their Customer Information (*defined below*). Licensee acquires no ownership rights to any Log-In Credentials, and Log-In Credentials may be revoked or changed at any time. Log-In Credentials shall be held in strict confidence by Customers. 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 shall immediately notify CureMD: (i) following any unauthorized use, access or other compromise of an Log-In Credentials; and (ii) when an Licensee ceases use the Services.

CureMD may, terminate or suspend any Licensee's access to Services (i) if Licensee breaches any term of this Agreement; or (ii) if CureMD reasonably determines that Customer's use or access adversely effects CureMD or the Services.

6. **Licensee Information; Confirmation.**
 - 6.1. **Licensee Information.** Licensee acknowledges and agrees that, in order to provide the Services, CureMD shall obtain and store certain Licensee information, which shall be made available to the Customer, including, without limitation: (i) the address, phone number, fax and email of the Licensee; (ii) information regarding Licensee appointment availability and National Provider Identifier (“**NPI**”); (iii) insurance plans in which each Licensee participates; (iv) general Licensee information; and (v) trademarks, logos and such other domains, images and materials that Licensee provides to CureMD (collectively, “**Licensee Information**”). CureMD may use, modify, display, and reproduce Licensee Information in connection with providing the Services. Licensee may request that CureMD modify Licensee Information. CureMD may incorporate such modifications and additional information into Licensee's profile in CureMD's sole discretion.
 - 6.2. **Confirmation of Licensee Information.** Licensee will cooperate with CureMD or its agents to verify the information specified in Section 6.1 and any other information that CureMD in its sole discretion deems necessary to confirm Licensee's professional qualifications. Licensee will promptly update and notify CureMD of any change in Licensee Information (*defined below*), including licensure status and any applicable disciplinary action involving the Licensee. Licensee is solely responsible for any liability or expense resulting from outdated or inaccurate Licensee Information. Licensee agrees that CureMD may, in its sole discretion, modify the processes and criteria it uses to evaluate Licensee's qualifications, including with respect to any specialty listing, and may reject a Licensee from being included in the Services for failure to meet CureMD's eligibility standards, in CureMD's sole discretion.
 - 6.3. **Licensee Information Representation and Warranties.** Licensee represents, warrants and covenants that at all times during the Term: (i) Licensee will provide CureMD with complete and accurate information about Licensee's specialties, practice or hospital affiliations, association memberships, board certifications, insurance participation, and contact information (including Licensee's professional address and phone and fax numbers); (ii) Licensee will configure and maintain their appointment calendar and provide CureMD with accurate and up-to-date information regarding each Licensee's appointment availability; (iii) each Licensee possesses valid, unexpired, unrevoked and unrestricted licenses, authorizations and certifications: (A) for all jurisdictions in which he or she practices (free of any disciplinary actions by state medical boards or other applicable regulatory bodies), (B) necessary to provide all services or treatment provided by Licensee to a Customer resulting from



Licensee's use of the Services, and (C) necessary for CureMD to display Licensee's specialties; (iv) each Licensee has entered into a valid and unexpired collaborative practice or other agreements to the extent required for such Licensee to practice (if applicable); (v) each Licensee is a member in good standing on the medical staff of any hospitals in which he or she practices with appropriate clinical privileges (if applicable); (vi) each Licensee possesses valid and unrestricted state and federal narcotic and controlled substances registrations, as applicable; (vii) each Licensee is and remains a participating provider in the Medicare and Medicaid programs (Titles XVIII and XIX of the Social Security Act, respectively) or is qualified to participate therein, but in any event is not excluded therefrom; (viii) Licensee will obtain and maintain professional liability insurance coverage and other insurance of the types and in the amounts that are at a minimum consistent with industry standards and applicable law, with respect to each Licensee; (ix) each Licensee treats all patients presenting themselves for treatment without regard to such patients' race, religion, gender, sexual orientation, disability, payer source or other unlawful considerations; (x) the healthcare provider primarily providing services for an appointment shall be the Licensee with whom such appointment is booked; (xi) Licensee will use the Services in compliance with all applicable laws and regulations, including, without limitation, the hospital conditions of participation, the patient freedom of choice laws and principles, and antitrust, competition, advertising, marketing and consumer protection laws and regulations; (xii) Licensee has the right to enter into the terms and conditions of this Agreement; (xiii) Licensee has all right, title and interest necessary for CureMD to provide the Services to Licensee; and (xiv) Licensee shall comply with the then-current Standard Etiquette available at www.curemd.com/Standard_Etiquette.pdf or any successor location.

7. **Customer Information.**

- 7.1. **Customer Information.** In order to provide the Services, CureMD shall obtain and store, and make available to the Licensee, certain Customer information, including, without limitation: (i) the address, phone number, fax and email of the Customer; (ii) information regarding Customer's preferences; (iii) insurance plans of the Customer; and (iv) general Customer information; and (collectively, "**Customer Information**"). Customer Information includes, without limitation, information that Customer provide directly to CureMD whilst (i) creating an account, (ii) searching for healthcare providers, (iii) completing medical history forms, (iv) leaving Reviews of the Licensee, or (v) utilizing Services. CureMD will maintain Customer consent for the use and disclosure of Customer Information in connection with the Services, whether in paper or electronic form. For the avoidance of doubt, Customer Information is information that Customers provide directly to CureMD so that CureMD can provide services to Customers, and does not include information obtained from or on behalf of the Licensee. Licensee acknowledges and agrees that Customer Information is not PHI (*defined below*).
- 7.2. **Confirmation of Customer Information.** Licensee will have Customer Information and shall be responsible for validating the Customer Information. Licensee hereby acknowledges, agrees, releases, and indemnifies CureMD from all claims and liability arising out of, related to, or in connection with Licensee's failure to validate Customer Information or arising out of, related to, or in connection with any omissions or errors in any Customer Information provided through the Services. Licensee has no rights in the Customer Information maintained by CureMD other than as expressly provided hereunder. If CureMD becomes aware that a Licensee is using any Customer Information obtained through the Services in a manner that is inconsistent with the terms of this Agreement, CureMD's terms of use or privacy policy, or applicable law, CureMD may, without limiting any of its other remedies available at law or in equity, request that Licensee immediately cease such inconsistent use and/or immediately terminate such Licensee's rights with respect to the Services. CureMD may, but has no obligation to, delete any content that CureMD, in its sole discretion, deems inappropriate for inclusion on the Site.
- 7.3. **Confidentiality.** Licensee represents, warrants and covenants that it will maintain the confidentiality of Customer Personal Information and shall only use Customer Personal Information as permitted in this Agreement and consistent with state and federal laws, including applicable privacy and data security laws.



- 7.4. Acceptance of Customers. The Licensee, by configuring Licensee's public calendar and publishing availability for scheduled visit, or accepting the walk-in or on-demand telemedicine visit, Licensee accepts such Customer, who books an appointment, as a patient. Licensee is fully and solely responsible for all care rendered to Customer, and for collecting payment from Customer for all services rendered. CureMD will have no responsibility for collection or any liability whatsoever for fees for services due to Licensee that are unpaid by Customer.
- 7.5. Incorrect Licensee Information. Licensee agrees that any Customer who makes an appointment with Licensee based on out-of-date or incorrect Licensee Information shall not be charged for any fees disputed or not otherwise covered by the Customer's insurance provider as a result of Licensee's failure to provide accurate Licensee Information. Without prejudice to the above, the Licensee shall be responsible for the Subscription Fees and booking fees as stated in the Order Form.
- 7.6. Scheduling Requests. Licensee is responsible for responding to customers in order to confirm/reschedule/cancel scheduled appointments or collect necessary information required for the provision of services within a reasonable amount of time, but in no event more than twenty-four (24) hours after appointment is booked or eight (8) hours prior to scheduled time. Licensee acknowledges and agrees that repeated rescheduling or cancelling of Customer appointments may result in Licensee being removed from, or otherwise affected in the order of display of, appointment listings available to Customers, in CureMD's sole discretion.
- 7.7. Contact. Licensee agrees that CureMD may contact them regarding the Services. If Licensee has opted out of receiving any email or facsimile communications from CureMD then, as a condition of receiving the Services hereunder, Licensee expressly opts back in to receiving such email and facsimile communications and hereby withdraws its opt out.
- 7.8. Benefit Information. Licensee may receive certain insurance-related information (including without limitation coverage and benefit information) of Customers ("**Benefit Information**") through the Services. Licensee's receipt of Benefit Information is subject to the terms and conditions in this section. Licensee agrees and acknowledges that: (i) Licensee is aware that the Benefit Information may be obtained via a clearing house and/or from the applicable insurance provider or Customer; (ii) CureMD cannot confirm the accuracy of this data; (iii) CUREMD MAKES NO GUARANTEES AND DISCLAIMS ALL WARRANTIES THAT SUCH BENEFIT INFORMATION IS ACCURATE, TIMELY, COMPLETE OR ERROR-FREE; and (iv) Licensee is ultimately responsible for verifying all Benefit Information with the applicable insurance carrier and Customer.
8. Content. CureMD shall develop, compile, modify or otherwise maintain all content on the Site or as part of the Services, including, without limitation, any Licensee photographs, and any content provided by Licensee or any Customers. Licensee acknowledges and agrees that CureMD may: (i) make content from the Site, including Licensee Information, through marketing initiatives; and (ii) use Licensee's name and/or NPI to obtain certain insurance information including, without limitation, coverage and benefit information. Licensee shall obtain any necessary permission or consent required to share the Licensee Information with CureMD and for CureMD to further use and disclose such information as described herein.
9. Reviews.
- 9.1. Customer Reviews. CureMD shall solicit feedback from Customers who use the Services ("**Reviews**"), and CureMD may, in its sole discretion, make these Reviews available through posting on the Site and/or third party sites in accordance with the terms of use governing such websites. CureMD shall have no obligation to (i) validate Reviews for veracity, accuracy or content, or (ii) remove any Reviews. CureMD shall have no liability with respect to Reviews including the content of such reviews. Licensee represents and warrants that it will not attempt to unduly influence or fraudulently create Reviews. CureMD shall have no liability to Licensee with respect to, and Licensee hereby releases CureMD from, all claims related to, arising from or in connection with Reviews, including without limitation claims that a Review is defamatory, unfounded, libelous, false, misleading, unfair, deceptive, and/or disparaging. Information provided by or about Customers or associated with Customers that is



contained in or part of Reviews is Customer Information but is not PHI (*defined below*) and is collected solely at the discretion of CureMD and not on behalf of Licensee.

- 9.2. **Third Party Sourced Reviews.** Licensee agrees that CureMD may use reviews sourced from third party sites (“**Third Party Sourced Reviews**”) and post them to the Site. CureMD may, in its sole discretion, make these Third Party Sourced Reviews available through posting on the Site and/or third party sites in accordance with the terms of use governing such websites. CureMD shall have no obligation to (i) validate Third Party Sourced Reviews for veracity, accuracy or content, or (ii) remove any Third Party Sourced Reviews. CureMD shall have no liability with respect to Third Party Sourced Reviews including the content of such Third Party Sourced Reviews. Licensee represents and warrants that it will not attempt to unduly influence or fraudulently create Third Party Sourced Reviews. CureMD shall have no liability to Licensee with respect to, and Licensee hereby releases CureMD from, all claims related to, arising from or in connection with Third Party Sourced Reviews, including without limitation claims that a Third Party Sourced Review is defamatory, unfounded, libelous, false, misleading, unfair, deceptive, and/or disparaging.
- 9.3. **Licensee Sourced Reviews.** If applicable, CureMD may also display through the Services certain reviews of Licensee submitted by Licensee directly to CureMD (“**Licensee Sourced Reviews**”). The parties agree and acknowledge that Licensee Sourced Reviews may not conform to the standard form of reviews CureMD customarily obtains from Customers, and accordingly, the parties agree to work in good faith to conform Licensee Sourced Reviews to CureMD’s standard form for publication through the Services. Licensee agrees and acknowledges that CureMD may, in its sole discretion, not publish or remove from display through the Services any Licensee Sourced Review to the extent it violates CureMD’s then-current policies or is in violation of applicable laws.

Licensee represents and warrants that (a) it has obtained all rights, titles, interests, consents and authorizations necessary in accordance with applicable law for CureMD to publish Licensee Sourced Reviews through the Services, (b) each Licensee Sourced Review is unbiased and no remuneration has been or will be provided to the applicable non-CureMD Customers for his or her review, and (c) each Licensee Sourced Review has been provided to Licensee or its agent by a non-CureMD Customers of Licensee in connection with services actually provided (or that ought to have been provided, as the case may be) by the Licensee associated with the applicable Licensee Sourced Review.

10. **Telemedicine Software.** CureMD may provide services that will enable Licensee to undertake health care encounters via telemedicine technology (“**Telemedicine Software**”). CureMD may choose to provide Telemedicine Software using a Third Party Service provider. CureMD’s services shall be limited to making the Telemedicine Software available, and under no circumstances shall CureMD be deemed to be the provider of Telemedicine Software. Licensee’s use and access of the Telemedicine Software is governed by the Telemedicine Solution License and Services Agreement available at www.curemd.com/LSA-Telemedicine.pdf. The Licensee understands and acknowledges that the Licensee will need to subscribe to the Telemedicine Software through an Order Form in order to receive online appointment bookings.
11. **Subscription Fees; Payment.**
- 11.1. **Pricing Payment Terms.** Licensee agrees to pay CureMD any initial set up or recurring fees and Subscription Fee specified on the Order Form. CureMD may invoice Licensee for the first payment in advance at the time of sign up, in advance for each subsequent license period, or as otherwise specified in the Order Form, as applicable.

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.



- 11.2. Suspension / Revocation of Access. Licensee acknowledges that in the event that Fees are not paid within thirty (30) days of Due Date, CureMD shall have the right to suspend the Licensee's access to, and use of, Services, until the delinquent Fees together with administrative late charge are paid to CureMD.
- 11.3. 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.
- 11.4. Additional Products / Services. CureMD may, upon notice fifteen (15) days' notice to the Licensee, charge additional fees for any additional products / services not originally included in this Agreement and to which Licensee gains access to.
- 11.5. 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 unless Licensee provides CureMD with a valid signed tax exemption certificate applicable to the Licensee. 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.
12. **Term and Termination.**
- 12.1. Term. Subject to the termination rights set forth in the Agreement, Licensee's right to access and use the Services shall, notwithstanding anything written in the Order Form, remain in effect for the initial term (and any renewal term) of twelve (12) months commencing on the Effective Date. This Agreement 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.
- 12.2. 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.
- 12.3. Immediate Termination. 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 3; or (iii) otherwise exposes CureMD to civil or criminal liability; (d) there is any wrongful or unauthorized access to, or use of, the Services by Licensee or any other third party; or (e) Licensee repeatedly reschedules or cancels Customer appointments of the Customer. In the event that this Agreement is terminated under Section 12.3(a), CureMD shall be nominated as the 'first creditor' with regards to the allocation of the Licensee's assets and any recovery thereof for payment due.
- 12.4. Audit. CureMD shall have the right to monitor utilization of the Services by the Licensee. If CureMD determines that Licensee's use of the 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.
- 12.5. Effect of Termination.



12.5.1. Upon termination of the Agreement: (i) access to and use of the 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 any CureMD Information and Materials and Confidential Information.

12.5.2. 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.

13. **Participation; Competition; Discount Reporting; No Inducement.**

13.1. **Participation.** CureMD will not exclude as a participant in the Services any individual or entity who meets the qualifications for participation as set forth herein. The parties agree that any Licensee payments are (i) consistent with fair market value in an arm's length transaction, (ii) not based on the value or volume of any items or services provided by Licensee to Customers, and (iii) do not constitute splitting of any professional fees paid to Licensee. The Services impose no requirements on the manner in which Licensee provides services to Customers, except that Licensee agrees not to charge any Customers different rates based upon, nor to charge Customers a fee for, such Customers booking through the Services or otherwise using CureMD services.

13.2. **Competition.** Licensee acknowledges, represents, warrants and covenants that it will not engage or participate in any act or omission involving the use of the Services: (i) to establish, attempt to establish, or enforce, directly or indirectly, any agreement or coordination of (A) the prices charged for any product or service; (B) the kinds, frequencies or amounts of any product or service offered; or (C) the customer or customer categories for any product or service; or otherwise engage or attempt to engage in price fixing, output restriction, or customer or market allocation; or (ii) to engage in any anti-competitive, deceptive or unfair act, omission or practice, or to otherwise violate applicable antitrust, competition or consumer protection laws or regulations.

13.3. **Discount Reporting.** Licensee acknowledges, represents, warrants and covenants that it shall disclose to each applicable payor, to the extent required by applicable law or contract, the net amount Licensee paid for the applicable Services hereunder (i.e., net of any applicable discounts, rebates, or other price concessions).

13.4. **No Inducement.** Nothing contained in this Agreement, including any compensation paid or payable, is intended or shall be construed: (i) to require, influence, or otherwise induce or solicit a party or any of its affiliates for referrals or arranging for the referrals of persons for items or services, or recommending the ordering of any items or services, of any kind whatsoever, to any of the other parties or their affiliates, or to any other person; (ii) as splitting of any professional fees paid to Licensee; (iii) to interfere with a patient's right to choose his or her own health care provider, or with a provider's judgment regarding the ordering of any items or health care services; or (iv) as remuneration in exchange for a disclosure of PHI or other information from a Customer or otherwise.

14. **HIPAA.** In the event that CureMD creates, receives, maintains, or transmits Protected Health Information (or "PHI", as such term is defined by HIPAA) from or on behalf of the Licensee in order to perform the Services, the parties agree and acknowledge that CureMD is serving as a Business Associate, as such term is defined in HIPAA, of the Licensee. CureMD's obligations with respect to PHI can be found in the Business Associate Addendum ("BAA") available at www.curemd.com/LSA-BAA.pdf.

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.



15. **Ownership / Title; Disparagement.** 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 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. Licensee acknowledges and agrees that it shall not (i) make any comparative references to CureMD, its pricing, or the Services; or (ii) disparage or otherwise denigrate CureMD or the Services.
16. **Monitoring; Access; Verification.** CureMD shall have the right to access and monitor use of the Services by Licensee to (i) operate and monitor the Services properly; (ii) protect itself or others; (iii) maintain accounting records regarding the usage of the Services by the Licensee; (iv) verify the list of Customers; and (v) retrieve usage patterns, behaviors, trends, error reports.
17. **Representations, Warranties, Acknowledgements and Covenants of Licensee.**
- 17.1. The Licensee acknowledges and agrees that CureMD is not a health care provider, and the Services, and CureMD Information and Materials are not intended to replace or substitute the professional judgment or skill of Licensee. Licensee 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 the medical care of any patient, actions of Licensee which may result in any liability or damages due to malpractice, failure to warn, negligence or any other basis;
- 17.2. The provision of medical services will be provided by Licensee in a manner that complies with all applicable state and federal laws and regulations, including, but not limited to, those that relate to (i) Licensee's scope of practice, (ii) remote prescribing, (iii) permitted modalities of telemedicine, (iii) privacy and security, and (iv) coding, billing and collection activities;
- 17.3. Licensee acknowledges that Site shall provide its visitors with Patient-Facing Services upon securing their consent to use the Site;
- 17.4. Licensee shall obtain consent from Customers prior to engaging in the provision of medical services, and such consent will comply with all applicable laws and regulations that may apply to health care services delivered;
- 17.5. Licensee shall be responsible for assessing insurance coverage and billing requirements that apply to the provision of medical services hereunder (including any such requirements that arise under state or federal law), and for providing CureMD with accurate and up-to-date information regarding each Licensee's insurance participation as applicable to the provision of medical services hereunder; and
- 17.6. Licensee has all necessary right, title and interest in and to the content submitted by Licensee to CureMD in order for CureMD to perform the Services, including any and all rights and interests in or to Licensee Information and any copyright, trademark, other intellectual property, publicity, and privacy (including necessary consents, authorizations and/or other legal permissions).
- 17.7. Licensee shall be responsible for establishing policies and procedures that shall be operationalized in the event that a Customer requires emergency health care services during a telemedicine encounter.
18. **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 or arising out of: (a) any services or treatment provided by the Licensee to a Customer or other patient; (b) Customer Information or Licensee Information; or (c) the Licensee's or its employees', officers', directors', agents' and / or contractors': (i) use of the 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 Services not in strict conformance with Documentation, workflows or functionality built into the Services; (vi) improper use, or infringement, of Third Party Services; and (vii) suspension, termination or change of the Licensee's access to Services.

19. **Disclaimer.** THE LICENSEE ACKNOWLEDGES THAT NEITHER CUREMD, NOR ITS THIRD PARTY SERVICE PROVIDERS, PROVIDE ANY 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 SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE".

The parties acknowledge and agree that CureMD is not responsible for: (i) the accuracy, reliability, timeliness, or completeness of Licensee Information or Customer Information, PHI, other data or information provided or received through the Services; (ii) any results that may be obtained from the use of the Services; (iii) the provision of Licensee's services; (iv) the cancelling or rescheduling of any appointment booked through the Services; (v) use of the Services after the Term; or (vi) losses or injury arising or resulting from the user of the Services.

CUREMD, OR ITS THIRD PARTY SERVICE PROVIDERS, DO NOT WARRANT THAT THE 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, PROVISION OF SERVICES, HEALTH CARE OR OTHERWISE, TO CUSTOMERS OR NON-CUREMD PATIENTS, 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 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.

THE LICENSEE ACKNOWLEDGES THAT CUREMD HAS NO CONTROL OF OR RESPONSIBILITY FOR THE LICENSEE'S USE OF THE 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.

20. **Limitation of Liability.** CureMD's cumulative, aggregate total liability in any way or in any degree under the Agreement (a) relating to or arising out of this Agreement, or (b) relating to or arising out of any other



agreement between, on the one hand, Licensee, and, on the other hand, CureMD or any third-party that is a partner, vendor, supplier, licensor or licensee of CureMD, shall in no event exceed an amount equal to 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 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.

21. **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. CureMD is not responsible for issues related to Licensee's computer or internal / external network.
22. **Implementation Services.**
 - 22.1. Trainings provided are billed at a standard hourly or daily rate. 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.
 - 22.2. All Implementation Services must be utilized by Licensee within 90 days from the Effective Date, 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).
23. **Third Party Services.**
 - 23.1. **Third Party Services.** The Services may include unrelated third party software and services which may be used solely with, or as part of, the Services and for no other purpose. 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.

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.
 - 23.2. **Third Party Beneficiaries.** Providers of Third Party Services shall be third party beneficiaries to this Agreement with respect to the services provided to Licensee.
24. **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 except for the provision or utilization of the 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. Confidential Information shall not include PHI, which is governed by the BAA.

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.

25. **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.
26. **Promotion; Goodwill.** Licensee shall use all commercially reasonable efforts to inform all of its patients about Services offered hereunder and to maintain the good will associated with CureMD's brand.
27. **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.
28. **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.
29. **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.
30. **Misc. / General.**



- 30.1. Time-Bar. Except for actions for non-payment or breach of CureMD's proprietary rights in the Services, 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.
- 30.2. Call Monitor and Recording. Licensee acknowledges and agrees that calls to and from CureMD may be monitored or recorded.
- 30.3. 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.
- 30.4. 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.
- 30.5. 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.
- 30.6. 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.
- 30.7. 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.
- 30.8. 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.
- 30.9. 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 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 Services until the end of Licensee's then-current term, at which time the Agreement, and Licensee's access to and use and receipt of Services shall terminate.
- 30.10. 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.
- 30.11. Electronic Signature. Licensee expressly agrees not to contest the validity of any electronic signature because the signature is performed electronically.