



Terms and Conditions Agreement

Thank you for selecting Curago Health! We are committed to improving the patient experience for your organization.

RECITALS

The objective of this Agreement is to set forth the terms under which Curago Health ("Company") will provide you ("Client") Curago Health™ Software and technical support.

1. **TERM.** The initial term of this Agreement is stated in the attached Service Order (the "Initial Term"), commencing on the date of the executed Service Order. This Agreement shall automatically renew (each a "Renewal Term") unless either Party notifies the other, in writing, not less than sixty (60) calendar days prior to end of the Initial Term (or any subsequent Renewal Term, as applicable).

- a. Client accepts and agrees to be bound by the Curago Software License Agreement attached hereto as Exhibit A, and acknowledges and agrees that it shall be responsible for ensuring that any person who uses the Curago Health™ Software on Client's behalf, or otherwise with Client's permission, shall do so subject to the provisions set forth therein.
- b. Client accepts and agrees to be bound by the Business Associate Agreement attached hereto as Exhibit B as "Covered Entity."
- c. Client accepts and agrees to be bound by the Patient Consent Provisions attached hereto as Exhibit C and Client provides each of the representations and warranties set forth on Exhibit C.

2. **RESPONSIBILITIES OF CLIENT.**

- a. Client agrees to appoint one representative to serve as Client's primary contact person with authority to approve all services and/or purchases requested and/or performed pursuant to this Agreement.
- b. Client agrees to provide and maintain the following minimum technology environment:
 - i. A broadband Internet connection (i.e., cable, DSL, partial to full T-1, etc.).
 - ii. A currently licensed, Curago compatible Electronic Health Record system which is updated to the then Curago approved version of the system.
 - iii. A currently licensed, vendor supported, business class hardware firewall between the internal network and the Internet.
- c. Client acknowledges that Curago software may be installed on a server with direct administrative access to client's electronic health record system's production and test database servers.
- d. Client shall cooperate with Company to resolve IT issues via telephonic or remote service software.
- e. Client acknowledges that in order to process credit card transactions on the Curago Health™ that it must be create an account via an approved Curago merchant partner. Additional charges may apply.

3. **WARRANTIES AND REPRESENTATIONS.**

- a. Company represents and warrants it will use commercially reasonable efforts to perform the services that are the subject of this Agreement. Company makes no guarantees or warranties, express or implied, that it will have the ability to resolve or eliminate any specific computer-related problems. CURAGO HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES UNLESS EXPRESSLY AGREED UPON IN

WRITING BETWEEN THE PARTIES, INCLUDING ANY IMPLIED WARRANTIES.

4. **LIMITATION OF LIABILITY.** In the event Company should be found liable for breach of this Agreement, liability shall be limited to an amount no greater than the amount of fees for service paid to Company by Client during the immediately preceding thirty (30) days. In no event shall Company be liable to Client, Client's employees, agents, servants, or any other third party, for any loss of profit, loss of business, direct or indirect, incidental, special, consequential, exemplary, and/or punitive damages arising out of or related to this agreement, even if Company has been advised thereof. Company shall not be liable to Client, if any person, other than Company, (including Client or Client's agents) alters the work performed by Company in any manner. Due to the number of hardware/software combinations and interactions beyond the control of Company, Company cannot guarantee that Client's system(s) will always run trouble-free nor can Company guarantee that every solution will be 100% effective. Company shall not be liable to Client for any problems caused by third party manufacturers of hardware or software.
5. **BREACH OF AGREEMENT.** In the event Client claims a breach of this Agreement, it shall so notify Company, in writing, in a timely manner. Company shall then be afforded a reasonable amount of time to cure such alleged breach.
6. **FEES AND PAYMENT.** Initial fees are set forth in the Service Order. One-Time hardware and Service Fees are due upon acceptance of this Agreement. The monthly fee for software and services is due on the first of each month. Monthly fees shall commence upon the date of the executed Service Order. Services will be suspended if payment is not received within 15 days following date due. Overdue invoices shall be subject to 1½% per month finance charge (18% APR). Monthly fees may increase by 5% at each Renewal.
7. **CONFIDENTIALITY.** Confidential information shall be deemed to include all information, materials and data disclosed or supplied by either party hereto to the other party hereto that the disclosing party designates to be of a confidential nature. If disclosed in written or tangible form or electronically, confidential information shall be identified as such by the disclosing party at the time of the disclosure and designated as "Confidential". If disclosed orally or visually, confidential information shall be identified as such by the disclosing party at the time of disclosure and designated as "Confidential" in a concurrent written memorandum. "Confidential" information shall not be disclosed without prior written consent of the disclosing party hereto. Company confirms that from time to time it will be given access to the Client's data for the purpose of maintaining and/or repairing same and further confirms that, in the event that Company becomes, therefore, privy to any information confidential to clients of Client, or of Client's proprietary information, Company shall keep such information strictly confidential.
8. **NO ORAL MODIFICATION.** No modification, amendment or waiver of any of the provisions, terms or conditions hereof shall be effective unless made in writing specifically referring to this Agreement and its terms and conditions and duly signed by each party hereto.

9. **ASSIGNMENT.** Except for assignments to Company affiliates or to any entity that succeeds to the business of Company in connection with a merger or acquisition, neither party may assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. Any attempted transfer, assignment or delegation in violation of the foregoing will be void.
10. **CONSTRUCTION.** The within agreement shall be construed in accordance with the laws of The State of Delaware. Although the within agreement has been drafted by Company, that fact shall not be construed to result in this Agreement being construed against Company.
11. **SEVERABILITY.** If any provision hereof is determined, by a court of competent jurisdiction, to be void and/or unenforceable, such determination shall not invalidate the remaining provisions hereof, which remaining provisions shall be fully binding and enforceable. Headings, titles and paragraph captions are inserted in the Agreement for convenience, are descriptive only and shall not be deemed to add to or detract from or otherwise modify the meaning of the Agreement.
12. **NOTICES.** Notices made pursuant to the terms of this Agreement shall be in writing, addressed to the appropriate party at the addresses first listed above, sent by United States Postal Service ("USPS"), prepaid First-Class postage. Notice shall be deemed made upon depositing such notice with USPS. Notice of changes in addresses shall be made in accordance with this Paragraph, but shall not be deemed made until receipt by the other party.
13. **INDEMNIFICATION.** Subject to the terms and conditions of this Agreement, Client shall indemnify, defend and hold harmless the Company and its representatives, officers, directors, employees, agents, affiliates, successors and permitted assigns against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by any pf them, relating to, arising out or resulting from (i) the Client's breach of this Agreement or (ii) the Client's failure to comply with applicable law or regulation.
14. **DISPUTE RESOLUTION.** All claims, disputes and questions relating hereto shall be decided by binding arbitration in accordance with the rules of ADR Services. Arbitration shall be held in Los Angeles, California.
15. **STATUS.** The status of Company under this Agreement shall be that of an independent contractor and not that of an agent or employee. Company has no authority to enter into contracts or agreements on behalf of Client. This Agreement does not create a partnership between the parties. Client recognizes and agrees that this Agreement is non-exclusive and that Company is free to contract with and work for any number of persons or firms while this Agreement is in force.

Exhibit A

Curago Software License Agreement

IMPORTANT. The healthcare management software platform entitled "Curago Health", which includes "Curago CareKiosk", and/or the Curago website and portals, together with current and future add-ons (the "**Software**") you seek to access as a service from Curago is licensed on the condition that you agree to the terms and conditions set forth below. PLEASE READ THE TERMS OF THIS SOFTWARE LICENSE AGREEMENT CAREFULLY.

YOUR AGREEMENT IS ON BEHALF OF THE BUSINESS OR ENTITY WHICH HAS SUBSCRIBED FOR THE SOFTWARE (THE "**USER**"). ACCESS AND USE OF THE SOFTWARE BY INDIVIDUAL EMPLOYEES AND/OR CONSULTANTS OF USER IS SUBJECT TO THIS AGREEMENT; AND USER SHALL BE LIABLE FOR ANY BREACH OF THIS AGREEMENT BY ANY OF ITS INDIVIDUAL USERS.

The Software that you are about to access was developed by Curago LLC, a California limited liability company ("**Curago**"), to assist health care providers with engaging with their patients.

This End-User License Agreement (this "**Agreement**") sets forth the terms under which the User may use the Software. This Agreement is entered into in connection with that certain Terms and Condition Agreement, by and between you and Curago (the "**Customer Agreement**").

Access to and use of the Software is by permission of Curago only, and only for Users who accept this Agreement. Curago may grant or withhold approval in its sole discretion. If Curago approves User for use of the Software, Curago will authorize User access to the Software for the term of this Agreement by issuing authorization credentials (individual User ID, password, or similar).

Based on the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, User and Curago agree as follows:

1. **NATURE OF AGREEMENT.** This Agreement is a legal contract made between User and Curago. This Agreement contains the terms and conditions that User must comply with if User wishes to access and use the Software.

The purpose of the Software is to integrate with the User's EHR system providing Curago with direct access to User's data, including protected health information that User inputs or uploads onto the platform or that Curago's receives on your behalf from your patients or authorized service providers. The Software: (1) makes information available to User for any legal purpose, and (2) makes health information available to, and exchangeable with, patients through a web-based portal. User authorizes Curago, as User's business associate and subject to the HIPAA business associate agreement between the parties, to use and disclose information. User is responsible for ensuring that its use of information is consistent with legal restrictions. Curago will permit access to User's information to User's patients to whom User has granted access through the Software. Curago will permit access to parties to whom you have provided access; Curago has no control over the uses and disclosures of such information and User shall be responsible to make sure that such parties comply with legal or regulatory obligations (including HIPAA). Curago may copy and create data sets from your information and use the same to prepare any reports that the Software makes available; any such reporting will be done in a manner that complies with applicable law. Curago may disclose User's information for such purposes as are required by law, and Curago may permit access to the Software by contracted service providers under appropriate confidentiality agreements and/or business associate agreements.

2. **LICENSE GRANT.** Curago hereby grants to User a limited, nonexclusive, nonassignable and nonsublicensable license, for User's internal use only, for the term of this Agreement, to access and use the Software and any guides, specifications and other related documentation available online (the "Documentation"), subject to the terms and conditions of this Agreement. The licenses granted herein are for a single device and are conditioned upon payment in full for the Software in advance of User's accessing of the Software, or as otherwise agreed in writing.
3. **OWNERSHIP OF SOFTWARE.** Curago retains all rights to the Software and the Documentation not specifically granted in this Agreement. Curago owns the Software and the Documentation and all copyright and other intellectual property rights therein, and this Agreement does not transfer to User any title to or any proprietary or intellectual property rights in or to the Software, any updates or derivative works thereto, or the Documentation,

4. **RESTRICTIONS.** User acknowledges and agrees that the Software may be used only for its intended purpose and only in accordance with the provisions of this Agreement and in compliance with all applicable laws and regulations. User agrees to take all reasonable steps to safeguard the access credentials provided by Curago for the Software so as to ensure that no unauthorized person will have access to the Software, and that no persons authorized to have access will make any unauthorized use. User shall promptly report to Curago any unauthorized use of the Software of which User becomes aware and shall take such further steps as may reasonably be requested by Curago to prevent unauthorized use thereof.
5. **USER'S OBLIGATIONS.** User shall be solely responsible for the following: (a) providing all hardware, software and communications capabilities required for use of the Software, as such specifications are set forth by Curago; and (b) providing and maintaining, at all times during the term of this Agreement, any Internet access necessary for User's use of the Software.
6. **CURAGO'S OBLIGATIONS.** Curago will synchronize data necessary to support the Software and services elected by User. User acknowledges that the Software is only compatible with supported EHR systems and User's use on any unsupported EHR system is at the sole risk of User and voids any warranty hereunder. Curago will only share electronic protected health information as authorized by law.
7. **TERM AND TERMINATION.** The license granted in this Agreement is effective until terminated. The term of this Agreement and the license granted herein shall commence on the date User agrees to this Agreement and accesses the Software and terminates upon the earlier termination of the term of the Customer Agreement or the termination of this Agreement pursuant to this Section 7. For the avoidance of doubt, prepaid license subscription fees are not refundable in any instance upon the termination of the license and this Agreement. Curago may terminate the license and this Agreement at any time on written notice to User that User has failed to pay any amount due whether pursuant to this Agreement, the Customer Agreement or any other agreement between you and Curago. This license shall also terminate automatically on User's failure to comply with any of the other terms of this Agreement or the Customer Agreement. On termination of this Agreement, User agrees to cease all access to the Software and promptly destroy all printed copies and delete all electronic copies of any Software and/or Documentation, and to ensure that no copies of any of the Software screens, data or other content remain archived or otherwise stored on User's computers and/or other mobile devices. Notwithstanding termination, the provisions of Sections 3, 7, 8, 9, 10, 11, 13, 16 and 17 of this Agreement shall survive and continue to apply.
8. **CONFIDENTIALITY.** User agrees that User shall not disclose to any third party the Software or any portion thereof, any technical, product or business information or any other information that Curago from time to time identifies as confidential (collectively "Confidential Information") related to the Software without the prior written consent of Curago. User shall maintain the confidentiality of all Confidential Information and shall not use it for any purpose other than the performance of this Agreement. User further acknowledges and agrees that the source code of the Software is a valuable trade secret and the Confidential Information of Curago, and User shall make no attempt to decompile, reverse engineer or otherwise obtain access to the source code.

Notwithstanding the foregoing, Confidential Information does not include information that User can demonstrate was (a) publicly available at the time of disclosure, or later became publicly available through no act or omission by User; (b) in User's possession before disclosure by Curago; or (c) disclosed to User by a third party not in violation of any obligations of confidentiality to Curago or to any third party.

9. **LIMITATION OF LIABILITY.** Subject to the other liability limitations contained herein, the maximum liability of Curago to User in damages for any cause relating to this Agreement, to User's use of (or inability to use) the Software, to any services provided by Curago under this Agreement, and/or to any services provided by any third party in connection with User's use of the Software, shall be the amount no greater than the amount of fees for service paid to Curago by User or Client during the immediately preceding thirty (30) days to Curago for the license hereunder.

IN NO EVENT SHALL CURAGO BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR

or any copyrights, patent rights or trademarks embodied or used in connection therewith, except for the rights expressly granted in this Agreement. The Software and the Documentation are protected by United States laws and international treaty provisions.

10. **LIMITED WARRANTY AND DISCLAIMER.** Curago hereby represents and warrants that the Software will, at the time User initially accesses the Software and for a period of 30 days thereafter, substantially conform to the Documentation in effect on the date of initial access of the Software (subject to release of updates) when used for its intended purpose and in compliance with Curago's instructions. In the event of a nonconformance during such period, User agrees to promptly report such nonconformance along with all information required by Curago. Curago shall investigate any such reported nonconformance and shall use commercially reasonable efforts to remedy such nonconformance. If Curago is unable to remedy such nonconformance within 90 days after the date Curago has received all relevant information with respect to such nonconformance from User, User's sole remedy under this Agreement is to return the Software, cease all access thereto, delete all copies and all Documentation from User's systems, and receive a refund of the price User paid.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CURAGO EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

CURAGO DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. IN ADDITION, CURAGO DOES NOT WARRANT OR GUARANTEE THAT USER WILL BE ABLE TO ACCESS THE SOFTWARE AT ALL TIMES. USER UNDERSTANDS AND ACKNOWLEDGES THAT INTERNET CONGESTION AND OUTAGES, AS WELL AS MAINTENANCE, DOWNTIME AND OTHER INTERRUPTIONS, MAY INTERFERE AT TIMES WITH USER'S ABILITY TO ACCESS THE SOFTWARE.

CURAGO DOES NOT WARRANT THAT THE SOFTWARE WILL WORK ON ANY UNSUPPORTED EHR SYSTEM AND CURAGO SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR MISUSE OF THE SOFTWARE INCLUDING THE INPUT OF BAD DATA OR OTHER TAMPERING WITH THE SOFTWARE.

DAMAGES FOR LOSS OF DATA, LOST PROFITS OR LOST BUSINESS OPPORTUNITIES.

USER MAY NOT ACCESS, COPY, MODIFY THE SOFTWARE, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NOR IN ANY MATTER ATTEMPT TO DERIVE THE SOURCE CODE.

11. **GOVERNING LAW.** This Agreement shall in all respects be governed by and be construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws provisions.
12. **FORCE MAJEURE.** If the performance by Curago under this Agreement is prevented, hindered or otherwise made impractical by reason of flood, strike, war, acts of government or any other casualty or cause beyond the control of Curago, then Curago shall be excused from its performance to the extent and so long as it is prevented, hindered or delayed by such event(s).
13. **SEVERABILITY.** If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.
14. **NO ASSIGNMENT.** User may not assign this Agreement or any of the rights granted by Curago hereunder, in whole or in part, without the prior written consent of Curago, and any attempt to do so shall be void. This Agreement is binding on and shall inure to the benefit of the parties and their respective successors and permitted assigns.
15. **DISPUTE RESOLUTION.** All claims, disputes and questions relating hereto shall be decided by binding arbitration in accordance with the rules of ADR Services. Arbitration shall be held in Los Angeles, California.
16. **ACCEPTANCE OF LICENSE TERMS OF SERVICE; CHANGES.** By using the Software, you are agreeing to be bound by all of the terms contained in this Agreement. If you do not agree to these terms, you should not use the Software. These terms govern whether you activate service through Curago directly or whether you do so through a third party. Curago reserves the right, from time to time, with or without notice to you, to change these terms in its sole and absolute discretion. The most current version of the Agreement can be reviewed by clicking on the ["Curago Health Terms"] link located at the Curago website (www.curagohealth.com). The most current version of the Agreement will supersede all previous versions. Your use of the Software or continued use of the Software after changes are made means that you agree to be bound by such changes.
17. **ACKNOWLEDGEMENT AND EXCLUSIVITY.** USER AGREES THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN USER AND CURAGO.

Exhibit B

Business Associate Agreement

Recitals

- A. Curago ("Business Associate") and ("Covered Entity"), have a business relationship by virtue of a contract(s) for Business Associate to provide products and services to Covered Entity.
- B. Business Associate must use and/or disclose Protected Health Information received from, or created, maintained or transmitted on behalf of, Covered Entity in its provision of products and services under the Contract.
- C. Covered Entity is required by the Privacy Rule and the Security Rule issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (**HIPAA**) and the HIPAA amendments issued pursuant to the Health Information Technology for Economic and Clinical Health (**HITECH**) Act of 2009 to protect the privacy and provide for the security of the Protected Health Information (**PHI**) and their implementing regulations.

In consideration of the receipt of Protected Health Information and other good and valuable consideration, Business Associate agrees as follows:

Section 1 Definitions

Capitalized terms used, but not otherwise defined, in this Agreement shall have the meanings given those terms in the HIPAA Privacy and Security Rules and HITECH.

Breach: "Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Rule, which compromises the security or privacy of the PHI. For the purposes of this definition, a breach is presumed to be a breach unless the Covered Entity (CE) or Business Associate (BA), as applicable, demonstrates that there is a low probability that the PHI has been compromised based on a four-factor risk assessment as amended in the Final HIPAA Omnibus Rule in §164.402(2).

Breach excludes:

- Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a Covered Entity (CE) or Business Associate (BA), if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
- Any inadvertent disclosure by a person who is authorized to access PHI at a CE or BA to another person authorized to access PHI at the same CE or BA, or organized health care arrangement in which the CE participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
- A disclosure of PHI where a CE or BA has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Electronic Health Record: "Electronic Health Record" shall mean an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

Electronic Protected Health Information: "Electronic Protected Health Information" shall mean Protected Health Information that is created, received, transmitted or maintained in electronic format or by electronic media.

Individual: "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

Privacy Rule: "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts §160 and §164, Subparts A and E.

Protected Health Information: "Protected Health Information" shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. §160.103, limited to the information created, received, maintained or transmitted by Business Associate, on behalf of, Covered Entity.

Security Incident: "Security Incident" shall have the same meaning as the term "Security Incident" in 45 C.F.R. §164.304.

Security Rule: "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. parts §160 and §164, Subparts A and C

Unsecured Protected Health Information or Unsecured PHI: "Unsecured PHI" shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of the HITECH Act.

Secretary: "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

Section 2
Obligations and Activities of Business Associate

Business Associate agrees to the following:

Not Use or Disclose PHI Unless Permitted or Required. Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement, the underlying or as Required by Law, for the proper management and administration of the BA, or as otherwise authorized by Covered Entity.

Use Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. In accordance with 164.502(e)(1)(ii), to ensure that subcontractors that create, receive, maintain, or transmit PHI on behalf of the BA agree to the same restrictions and conditions that apply to the BA with respect to such information. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Health Information Business Associate creates, receives, maintains or transmits on behalf of Covered Entity.

Mitigate Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

Report Impermissible Disclosures of PHI. Business Associate shall report to Covered Entity a discovery of Breach or any use or disclosure of Protected Health Information not permitted or required by this Agreement within a reasonable period of time after becoming aware of such use or disclosure, including those occurrences reported to Business Associate by its subcontractors or agents. Business Associate also agrees to report to Covered Entity any Security Incident related to Electronic Protected Health Information of which Business Associate becomes aware.

Report Breach of Unsecured PHI. In the case of a Breach of Unsecured PHI, Business Associate shall notify Covered Entity as required by 45 CFR §164.410.

Compliance of Agents and Subcontractors. Business Associate agrees to require any agent, or subcontractor to whom it provides Protected Health Information received from Covered Entity to agree to the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such uses and disclosures of PHI. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect such information, which shall be no less than those required of Business Associate.

Provide Access. Business Associate agrees to provide access, during normal business hours, to Protected Health Information in a Designated Record Set of Covered Entity to Covered Entity in order to meet the requirements of 45 C.F.R. §164.524, provided Covered Entity delivers written notice to Business Associate at least five business days in advance requesting such access. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information in a Designated Record Set of Covered Entity or if the Protected Health Information held by Business Associate merely duplicates information held by Covered Entity.

Incorporate Amendments. Business Associate agrees to incorporate any amendment(s) to Protected Health Information in a designated record set of Covered Entity that Covered Entity directs pursuant to 45 C.F.R. §164.526. This provision does not apply if Business Associate and its employees, subcontractors and agents have no Protected Health Information from a designated record set of Covered Entity.

Disclose Practices, Books, and Records. Unless otherwise protected, or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule. Business Associate shall have a reasonable time within which to comply with requests for such access and in no case shall access be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.

Document Disclosures. Business Associate agrees to maintain sufficient documentation of such disclosures of Protected Health Information by Business Associate as would be required for Covered Entity, or Business Associate on its behalf, to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528.

Accounting of Disclosures. On request of Covered Entity, Business Associate agrees to provide to Covered Entity, or as directed by Covered Entity, to Individual, an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528. Business Associate shall have a reasonable time within which to comply with such a request from Covered Entity and in no case shall Business Associate be required to provide such documentation in less than five (5) business days after Business Associate's receipt of such request.

Respond to Requests from Individuals. Except as this Agreement or any other agreement between Covered Entity and Business Associate may otherwise provide, in the event Business Associate receives an access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate will redirect the Individual to Covered Entity.

Section 3
Permitted Uses and Disclosures by Business Associates

Functions and Activities on Behalf of Covered Entity. Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of Protected Health Information necessary to meet its obligations under this Agreement and under the Contract, if such use or disclosure would not violate the Privacy Rule if done by Covered Entity. All other uses or disclosures by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.

Business Associate's Management and Administration. Except as otherwise limited by this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

Disclosure by Business Associate Required by Law or With Reasonable Assurances. Except as otherwise limited by this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate and to carry out its legal responsibilities, provided that disclosure is Required By Law, or provided that the Business Associate obtains reasonable assurances from the person or entity to whom the Protected Health Information is disclosed that: 1) the Protected Health Information will be held confidentially; 2) the Protected Health Information will be used or further disclosed only as Required By Law or for the purpose(s) for which it was disclosed to the person or entity; and 3) the person or entity will notify Business Associate of any instances of which the person or entity is aware in which the confidentiality of the information has been breached.

Data Aggregation Services. Except as otherwise limited by this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

Section 4 **Term and Termination**

Term. The Term of this Agreement shall begin on , or the effective date of the Contract, whichever is later. This Agreement shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created, maintained or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible in the determination of the Business Associate to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

Termination for Cause. Upon Covered Entity's reasonable determination that Business Associate has breached or violated a material term of this Agreement, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate the Contract, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible.

Effect of Termination. Upon termination of the Contract and receipt of written demand from Covered Entity, Business Associate agrees to, if feasible, return or destroy all Protected Health Information received from, or created or maintained by Business Associate on behalf of, Covered Entity. In the event the return or destruction of such Protected Health Information is not feasible in the determination of Business Associate, the protections of this Agreement will remain in force and Business Associate shall make no further uses and disclosures of Protected Health Information except for the proper management and administration of its business or to carry out its legal responsibilities or as Required By Law.

Section 5 **Miscellaneous Provisions**

Regulatory References. A reference in this Agreement to a section in the Privacy Rule, Security Rule and HITECH means the Section in effect or as amended and for which compliance is required.

Amendment. Business Associate agrees to take such action as is necessary to amend this Agreement from time to time as is necessary, as determined by Business Associate, for Covered Entity to comply with the requirements of the HIPAA Privacy Rule, Security Rule and HITECH.

Survival. The rights and obligations of Business Associate under Section 4.3 of this Agreement shall survive the termination of this Agreement and the termination of the Contract.

Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule, Security Rule and HITECH.

Exhibit C

Patient Consent Provisions

- i. Client has the full power and authority to enter into and perform its obligations under this Agreement.
- ii. Client has the full ability and legal right to provide and make available Client Materials to Company for Company's use as contemplated by this Agreement. For the purposes of this Agreement, "Client Materials" means all information, text, media, creative, logos, trademarks, tradenames, software, computer code, and related materials, regardless of format, provided by or on behalf of Client to Company for purposes of Company's performance of the services contemplated by this Agreement, including without limitation, any information of or related to any customers, clients or patients of the Client.
- iii. Client has obtained all required consents, and has the right and authorization (where required by law) to (i) use Client Materials, including but not limited to email addresses and phone numbers, to contact Participants by email and by phone (including by artificial or prerecorded voice or text message, or via an automatic telephone dialing system) for the purposes contemplated by this Agreement, and to allow Company to do so on its behalf, and (ii) to transmit personal health information via email; and further that any email addresses and phone numbers provided to Company for the purposes set forth herein are accurate, and that Client may make the communications to the phone numbers and email addresses provided without violating any applicable laws, including but not limited to (i) the CAN-SPAM Act, (ii) the various state and federal Do Not Call ("DNC") laws, and those governing the National Do Not Call Registry ("NDNCR"), (iii) the Telephone Consumer Protection Act (47 USC § 227), and its implementing regulations adopted by the Federal Communications Commission (47 CFR § 64.1200), as amended from time-to-time ("TCPA"), the Amended Telemarketing Sales Rule ("ATSR"), 16 CFR 310 et seq.; (iv) applicable telemarketing record keeping requirements; (v) call hour/time of day restrictions (as required by applicable law or as directed by the called party during the course of the call); (vi) disconnect and call abandonment requirements; (vi) prohibitions against contacting facilities and telephonic devices of certain classifications using autodialers (or any other automatic telephone dialing system), artificial voice calls and/or pre-recorded calls without "prior express written consent" (as defined under the TCPA) in each instance; (vi) caller identification and consent requirements; and (vii) opt-out and internal do-not-call request requirements.
- iv. Client represents and warrants that any phone numbers it provides to Company remain valid and that the subscriber or regular user of the phone number have not revoked consent to be called, including via an artificial or prerecorded voice, text message, or via an automatic telephone dialing system. In the event the subscriber or regular user of a phone number revokes consent or requests not to be contacted, or limits the scope of any such consent, Client shall provide notice to Company within 24 hours of receipt of any such revocation, request, or limitation in the format and channel prescribed by Company.
- v. If specifically requested by Company, Client will provide Company with a data set of de-identified information, de-identified pursuant to the standards of 45 CFR §164.514.
- ix. Client and its Personnel shall comply with all laws applicable to the conduct of its business.
- xii. Client shall not violate any applicable local, state, federal or international laws or regulations, or perform any activity that would cause Company to violate any law, statute or regulation. Client further understands and agrees that the requirement to comply in all respects with this Section of this Agreement are material terms, the individual breach of which will give rise to Company's immediate right to suspend this Agreement or terminate this Agreement and without prejudice to any other rights and obligations of Company for breach of this provision, including Company's right to pursue all legal remedies (injunction and damages) under contract, and in equity, and statutory and common law.
- xiii. Without limiting the foregoing, Client represents and warrants that all: (A) customers, clients or patients of the Client ("Participants") consist of persons who have supplied express affirmative consent to receive commercial telephone calls from Company; (B) Client shall scrub Participants against the NDNCR, any and all state DNC Registries and against its internal do-not-call list prior to calling any Participants; and (C) Participants shall consist of individuals who have provided "prior express written consent" to receive commercial telephone calls (including pre-recorded calls, artificial voice calls and/or autodialed calls) from Client and Company, within the meaning of the TCPA, to the telephone number(s) provided by such individuals.
- xiv. Client shall retain the records of each Participant's "prior express written consent" ("Consent Records") for a minimum of four (4) years following creation of same, and shall provide such Consent Records to Company within three (3) business days of receipt of Company's request for same, at any time.
- xv. The Consent Records shall include, at a minimum, (i) the language used to obtain "prior express written consent," (ii) the IP address of the source of the consumer data (or telemarketing voice consent capture tapes, if applicable), (iii) the URL address of the Client's website, including the date and time stamp indicating the time that the data was collected, and (iv) all information that is input by the Participant (name, phone number, address, email address, etc.).
- xvi. Company may, at its sole discretion, review compliance of Client's Consent Records, in conjunction with the guidelines and restrictions contained in this Agreement, including, without limitation, the recordkeeping requirements set forth in this Section of

the Agreement and compliance with all applicable laws. Company shall provide reasonable notice to the Client of the timing of the audit, and Client shall cooperate with Company in conducting any audit or review of the Consent Records. Such review or audit does not constitute legal advice or an opinion as to the appropriateness, legality or compliance with any applicable laws. Client should consult with Client's own attorney and advisors to confirm the appropriateness and lawfulness of the Consent Records.

xvii. Client shall notify Company within five (5) business days of any of the foregoing representations, warranties, and covenants are no longer being true.