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BY CHECKING THE ACCEPTANCE BOX OR USING ALL OR ANY PORTION OF THE ENGAGEDMD SERVICES, YOU (ALSO REFERRED TO AS “**CUSTOMER**”) ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU AND LEGALLY BINDING BETWEEN YOU AND ENGAGEDMD, LLC (“**ENGAGEDMD**”). IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT USE THE ENGAGEDMD SERVICES. ENGAGEDMD’S ACCEPTANCE IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL THE TERMS OF THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS; IF THESE TERMS ARE CONSIDERED AN OFFER BY ENGAGEDMD, THEN ACCEPTANCE IS LIMITED TO THESE TERMS. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Customer and EngagedMD agree to the following General Terms and Conditions, and any referenced exhibits/addenda and the Registration Form (collectively, the “**Agreement**”):

**GENERAL TERMS AND CONDITIONS**

**V 8.1.18**

1. **Definitions**
	1. “**Authorized Customer Administrators**” means the personnel who are authorized by Customer via a unique user ID and password to manage and administer the EngagedMD Services for and on behalf of Customer.
	2. “**Customer**” means the customer identified in the Registration Form.
	3. “**EngagedMD Platform**” means the Software-as-a-Service (SaaS)-based platform created by EngagedMD, including all updates, enhancements and modifications thereto, and all intellectual property contained therein.
	4. “**EngagedMD Services**” means the web-based educational service, with documented Patient participation in education modules, designed to assist Customer in the administration of the Customer’s informed consent process with its Patients, and its documentation of the Patients’ participation in the informed consent process. The EngagedMD Services includes the EngagedMD Site and Internet web pages, including but not limited to, the functionality, text, graphics, videos, data, information, materials and software contained or provided in any form or media that may be accessible through the EngagedMD Platform, which is currently located at the EngagedMD Site, including all updates, enhancements and modifications thereto made available by EngagedMD.
	5. “**EngagedMD** **Site**” means the website located at the URL: [www.EngagedMD.com](http://www.EngagedMD.com) and related EngagedMD websites and pages.
	6. “**Informed Consent Process Documentation**” means any documentation generated by or enabled by the EngagedMD Services including, without limitation, documentation of the progress of a Patient through the applicable education modules, Patient inquires and initial answers to Patient inquires, and the electronic signature on a Patient Consent Form and signatures for a specific medical procedure as presented by the EngagedMD Services.
	7. “**Patient(s)**” means Customer’s patients (or the patients of Customer’s clients) whom Customer has enrolled and authorized to use the EngagedMD Services.
	8. “**Patient Consent Form(s)**” has the meaning set forth in Section 3.3 below.
	9. “**Patient Portal**” means the online portal on the EngagedMD Site for enrolled Patients to set up an account and designate a unique login and password in order to view, access and complete the applicable education modules, and provide the Patient’s official e-signature for consent for a specific medical procedure as presented by the EngagedMD Services.
	10. “**Registration Form**” means the EngagedMD registration form completed by Customer for the right to use the EngagedMD Services made available by EngagedMD to Customer.
	11. “**Subscription Term**” means the term specified on the Registration Form during which the EngagedMD Services will be provided to Customer. If no term is specified on the Registration Form then the Subscription Term will be deemed to be month-to-month.
2. **Services Provided**
	1. EngagedMD Services. Subject to the terms and conditions of the Agreement, EngagedMD will make the EngagedMD Services available to Customer only (a) during the Subscription Term, (b) for use by Authorized Customer Administrators and Patients, (c) for Customer’s internal business purposes or the business purposes of Customer’s clients, and (d) in accordance with any additional EngagedMD Services rights and limitations set forth on the Registration Form or on the EngagedMD Site, and all in accordance with EngagedMD’s documentation and stated policies made available on the EngagedMD Site.
	2. Setup and Registration. In connection with the setup and registration of Customer to use the EngagedMD Services, EngagedMD will provide the Setup and Registration Services set forth on the Registration Form or otherwise deemed necessary by EngagedMD.
	3. Data Retention Policy. Customer understands and acknowledges that it is Customer’s sole responsibility to retain copies of the Informed Consent Process Documentation for its Patients for the period of time required by law. Upon request by Customer, EngagedMD will retain backup copies of Customer’s Informed Consent Process Documentation during the Subscription Term and for thirty (30) days after the Subscription Term (“**Documentation Retention Period**”) at a rate of $25/month for up to 100GB. EngagedMD will make the stored Informed Consent Process Documentation available to Customer upon Customer’s request. If Customer’s Informed Consent Process Documentation is larger than 100GB, then EngagedMD will negotiate in good faith with Customer applicable storage charges. EngagedMD will provide Customer, via the email address Customer provided when completing Customer’s registration with EngagedMD and as updated by Customer from time to time, with directions for how Customer may download Customer’s Informed Consent Process Documentation from the EngagedMD Site. Customer will promptly update its applicable email address on the EngagedMD Site via Customer’s account.
	4. Support and Maintenance Services. At no additional charge, EngagedMD will provide standard support and maintenance services (“**Support Services**”) to Customer with respect to the EngagedMD Services, and Customer’s use of the EngagedMD Services, in accordance with EngagedMD’s then-current standard Support Services policy. As a convenience, EngagedMD’s current (as of the Effective Date of this Agreement) standard Support Services policy is attached here to as part of the Service Level Agreement. EngagedMD may update its Support Services policy from time to time and will make such updated Support Services policy available to Customer on the EngagedMD Site; provided that EngagedMD will in no event materially degrade the quality of Support Services set forth in the Service Level Agreement.
	5. Third Party Vendors. EngagedMD will have the right to use third parties in performance of the EngagedMD Services (“**Third Party Vendors**”), provided that all such third parties are qualified to perform the tasks assigned to them and are bound by written agreements requiring them to maintain the confidentiality of Customer’s Confidential Information consistent with the terms and conditions of Section 6 of this Agreement. For purposes of this Agreement, all references to EngagedMD or its employees will be deemed to include such third parties.
	6. Training. Customer may obtain, at its expense, mutually agreed training from EngagedMD with respect to use of the EngagedMD Services.
	7. Professional Services. At no additional charge, Customer may upload a personalized introduction to the EngagedMD Services viewed by Customer’s Patients. Customer also may request that EngagedMD customize the EngagedMD Services for Customer. If Customer desires EngagedMD to customize the EngagedMD Services in any way, then upon mutual agreement of the parties EngagedMD will provide the professional services specified on the Registration Form for the listed or mutually agreed fees.
	8. Feedback. EngagedMD will have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to EngagedMD Services.
3. **Customer Obligations**
	1. Password Administration and Access. EngagedMD will create and assign a Login ID/ Authorized User ID for Customer and allow Customer to select its password to enable Customer to administer online access by Authorized Customer Administrators to the EngagedMD Services. Customer will (a) be responsible for Customer’s and its Authorized Customer Administrators’ compliance with the terms and conditions of this Agreement; (b) be responsible for the confidentiality of (and for all activities that occur under) the Login ID/ Authorized User IDs and passwords assigned to or selected by Customer; and (c) notify EngagedMD promptly of any such unauthorized access or use of which Customer is aware.  Customer acknowledges that only certain Internet browsers and browser versions are capable of accessing the EngagedMD Services. Customer may obtain the then-current list of such browsers and browser versions from EngagedMD upon request.
	2. Education Modules. Customer represents and warrants that (a) Customer has viewed the education modules available as part of the EngagedMD Services and has determined that the education modules, and the EngagedMD Services, are accurate and helpful educational materials that will augment and assist its Patients’ understanding of the Informed Consent Process Documentation that Customer has prepared for its Patients, and (b) the education modules available as part of the EngagedMD Services will provide educational and documentation value to the informed consent process that Customer engages in with its Patients as part of the medical treatment it provides to its Patients.
	3. Patients. Customer understands and agrees that it is Customer’s responsibility to: (a) determine which of its Patients it desires to use the EngagedMD Services; (b) obtain each Patient’s agreement to use the EngagedMD Services; (c) submit into the Patient Portal the names, email addresses, and other required information of those Patients who agree to use the EngagedMD Services, and the specific educational modules authorized to be viewed and accessed by each such Patient; (d) instruct such Patients to register and set up an account for the EngagedMD Services once they receive an emailed link to the Patient Portal; and (e) upload into the EngagedMD Services the unsigned Patient informed consent form(s) (“**Patient Consent Forms**”) to be completed and signed by a Patient (either in Customer’s offices or via the Patient Portal). Customer understands and agrees that the Patient Consent Forms are the work product of Customer and have not been, and will not be, reviewed or approved by EngagedMD, nor will the Patient Consent Forms represent, in any way, the work product of EngagedMD.
	4. Customer Content. Customer hereby grants EngagedMD a worldwide, non-exclusive and royalty-free license to copy, use, store, display, perform and distribute the Customer Content (as defined below) as necessary and required to perform the EngagedMD Services for Customer. Customer represents and warrants that Customer has obtained all necessary permissions, rights and consents for all of the Customer Content provided to EngagedMD under this Agreement to enable EngagedMD to perform the EngagedMD Services for Customer.
	5. Patient Disputes. As between EngagedMD and Customer, Customer will be solely responsible for any and all disputes between Customer and any Patients, and Customer will indemnify and hold harmless EngagedMD with respect to any such disputes as set forth in Section 8 below.
	6. Compliance with Laws. Customer is solely responsible for complying with the laws affecting or regulating its business, employees, Patients, and the like. Customer understands that EngagedMD’s provision of the EngagedMD Services does not relieve Customer of any responsibility and liability for those matters that Customer would otherwise have. Customer is solely responsible for ensuring Customer’s use of EngagedMD Services complies with applicable laws, rules and regulations including, without limitation, those related to informed consent, privacy, HIPAA, and the transmission of personal data. Except as expressly set forth with respect to EngagedMD’s responsibilities under this Agreement, Customer is solely responsible for any and all damages that flow from Customer’s use of EngagedMD Services, the Informed Consent Process Documentation and Customer’s relationship with each Patient.
	7. Restrictions. This is an Agreement for services, and Customer is not granted a license to any software, technology or intellectual property by this Agreement. Customer will not, directly or indirectly: (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of or included in the EngagedMD Services or any software, documentation or data related to the EngagedMD Services; (b) modify, translate or create derivative works based on the EngagedMD Services; (c) copy, distribute, pledge, assign or otherwise transfer or encumber rights to the EngagedMD Services; or (d) use the EngagedMD Services for timesharing or service bureau purposes.
	8. Backup Storage. While the EngagedMD Services enable Customer to store, access and manage Informed Consent Process Documentation, it is not intended for the storage of any other data. Using the Customer account as a general online storage space for archiving any other electronic files is prohibited and may result in termination or suspension of EngagedMD Services upon notice.
4. **Ownership**
	1. Customer Ownership. As between Customer and EngagedMD, Customer will retain all right, title and interest in and to the Personal Information (as defined below), information regarding or derived from Patients, Informed Consent Process Documentation, Patient Consent Forms, information, data, text, graphics, literary, artistic or other content, including but not limited to photos and videos, or other materials provided by or on behalf of Customer in any form or media for use by EngagedMD in providing the EngagedMD Services to Customer or uploaded or posted by Customer onto the EngagedMD Services or Patient Portal (collectively, or individually, “**Customer Content**”). Customer acknowledges and agrees that its Patients will obtain Informed Consent Process Documentation that pertains to them from Customer, and not from EngagedMD.
	2. EngagedMD Ownership. Subject to Customer’s ownership of the Informed Consent Process Documentation, EngagedMD will retain all right, title and interest in and to all intellectual property and proprietary rights with respect to the EngagedMD Services provided by EngagedMD, together with any and all software and other technology that enables the provision of such EngagedMD Services, and any training materials, documentation, whitepapers, and deliverables provided by EngagedMD under this Agreement, and any suggestions for modifications or improvements to the EngagedMD Services provided by Customer or its Patients.
	3. Reservation of Rights. Customer’s rights to use the EngagedMD Services will be limited to those expressly granted in this Agreement. EngagedMD reserves all rights and licenses in and to the EngagedMD Services not expressly granted to Customer under this Agreement. Title to the EngagedMD Services is not conveyed hereunder.
5. **Fees and Payment Terms**

## Fees. As of the Effective Date of this Agreement, the EngagedMD Services provided hereunder are provided at no charge. However, any additional services (and related expenses) requested by Customer such as Professional Services will be provided at EngagedMD’s standard fees or fees mutually agreed by the parties and paid by Customer within 30 days after receipt of EngagedMD’s invoice for such services. EngagedMD reserves the right in the future to charge for the EngagedMD Services at any time in its sole discretion, upon notice to Customer. Upon receipt of such notice, if Customer objects to payments for such EngagedMD Services, Customer may terminate this Agreement for convenience pursuant to Section 10.2 below. No different or additional terms and conditions submitted by Customer with an order or other work authorizations will apply, whether preprinted or otherwise; EngagedMD’s failure to object to provisions contained in any communication from Customer will not constitute acceptance of those provisions. All fees are quoted and payable in U.S. dollars only, unless otherwise set forth in the Registration Form. If a party disputes in good faith any amounts due and owing under this Agreement, such party promptly will notify the other party in writing of such dispute and the parties will reasonably cooperate to resolve such payment dispute. Except as expressly stated in this Agreement, all payment obligations are non-cancelable and all amounts paid are non-refundable.

## Expenses. Customer will reimburse EngagedMD for any reasonable out-of-pocket expenses incurred by EngagedMD, and pre-approved by Customer, in connection with the provision of any services.

## Taxes. All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, excise, import, export, property, and other taxes and duties (“**Taxes**”). Customer is responsible for and will pay for all Taxes assessed in connection with this Agreement by any authority which are rightfully imposed on Customer as determined by the appropriate governing entity. This provision does not apply to any Taxes for which Customer is exempt and for which Customer has furnished EngagedMD with a valid tax exemption certificate authorized by the appropriate taxing authority.

## Past Due Invoices. All past due amounts will incur interest at a rate equal to the lower of 1.5% per month or the highest rate permitted by law. In the event that Customer is delinquent in the payment of any undisputed amounts due EngagedMD, EngagedMD may suspend its provision of any EngagedMD Services, or Customer’s access to any EngagedMD Services, upon 15 days advance written notice to Customer. A suspension under this Section will not constitute a termination of the Agreement nor will it relieve Customer of any of its obligations or liabilities under the Agreement including, without limitation, payment obligations.

* 1. Reports. EngagedMD may collect data and information from Customer’s use of any EngagedMD Services. Such data and information may be used by EngagedMD to provide EngagedMD with analyses of EngagedMD products and services.
1. **Confidential Information**
	1. Confidential Information. Each party acknowledges on its own behalf and on behalf of its officers, directors, employees, agents and consultants, (“**Personnel**”) that during the term of this Agreement, it (“**Receiving Party**”) may receive from or on behalf of the other party (“**Disclosing Party**”) confidential and proprietary business, financial and technical information relating to Disclosing Party, and Personal Information (as further defined below) (collectively and individually, “**Confidential Information**”). “**Personal Information**” means any and all information, that identifies or is capable of identifying an individual, including (a) an individual’s name, social security number, date of birth, or driver’s license or other government-issued identification number; (b) an individual’s contact information, such as an email address, residential address or telephone number; (c) demographic information such as an individual’s gender, race and age; (d) financial and health information, including credit card information; (e) information about an individual whose disclosure is protected or otherwise regulated by law; and (f) any information regarding such person's relationship to the Disclosing Party. For clarity, all Personal Information and any other information regarding Patients or derived from Patients is deemed the Confidential Information of Customer.
	2. Use and Nondisclosure Obligations. The Receiving Party will: (a) hold the Disclosing Party’s Confidential Information in confidence and use the same degree of care to protect the Disclosing Party’s Confidential Information as it uses for its own Confidential Information of like importance but in no event using less than a reasonable standard of care, (b) not divulge any such Confidential Information or any information derived therefrom to any third person except as authorized hereunder, (c) not make any use of such Confidential Information except to carry out its rights and obligations under this Agreement, and (d) not copy such Confidential Information (except as necessary to carry out its rights and obligations under this Agreement). The Receiving Party will only permit access to Confidential Information to those of its Personnel: (i) who require access thereto for a purpose authorized by the Agreement, and (ii) who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein. The Receiving Party will use and disclose Confidential Information only to the extent required to provide, perform or receive, as applicable, the EngagedMD Services hereunder.
	3. Personal Information. EngagedMD will keep appropriate, complete and accurate records of Customer’s and Patients’ Personal Information and, if disclosed to third parties, records as to any disclosure. Any governmental entity with jurisdiction or oversight authority, may, upon prior notice to EngagedMD, audit EngagedMD’s records of Customer’s and Patients’ Personal Information and, to the extent relevant to the security of Personal Information, EngagedMD’s security practices and data processing activities.
	4. Agreement Terms and Conditions. Each party may disclose the terms and conditions of this Agreement: (a) on a confidential basis to legal or financial advisors, (b) pursuant to a registration report or exhibits thereto required to be filed with the Securities and Exchange Commission, listing agency or any state securities commission, or any other associated filings, or (iii) on a confidential basis in connection with any financing transaction or due diligence inquiry. During the term of this Agreement and for three years after its termination, neither party will disclose to any third party the specific terms of this Agreement without first obtaining the written consent of the other party.
	5. Exceptions. Other than Personal Information, and any information pertaining to or derived from Patients, Confidential Information will not include information that: (a) becomes public without breach of this Agreement by the Receiving Party or its Personnel, (b) was previously in the Receiving Party’s possession (in written or other recorded form) with no obligation to maintain confidentiality, (c) was received from a third party not under any obligation of confidentiality with respect to such information, or (d) was developed by Receiving Party independently of, and without use of or reference to, the Disclosing Party’s Confidential Information; provided in each case that such forgoing information was not delivered to or obtained by the Receiving Party as a result of any breach of this Agreement, the law or any contractual, ethical or fiduciary obligation owed to the Disclosing Party. The Receiving Party may disclose Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body; to the extent allowed by law, Receiving Party will give reasonable notice to the Disclosing Party to allow the Disclosing Party the opportunity to contest such order or requirement or seek confidentiality treatment.

* 1. Return of Confidential Information. Upon the written request of the Disclosing Party, the Receiving Party will return or destroy (and certify such destruction in a signed writing) all Confidential Information of the Disclosing Party, including all copies thereof and materials incorporating such Confidential Information, whether in physical or electronic form. Each party may retain a copy of the other party’s Confidential Information solely for archival purposes; provided, however, that in no event will EngagedMD retain any Personal Information of Customer or Patients unless otherwise required by law or industry compliance regulation. To the extent that it is impracticable to return or destroy any Confidential Information, and with respect to any copies retained for archival purposes, the Receiving Party will continue to maintain the Confidential Information in accordance with this Agreement. The confidentiality obligations set forth in this Agreement will survive the termination of this Agreement and remain in full force and effect until such Confidential Information, through no act or omission of the Receiving Party, ceases to be Confidential Information as defined hereunder.
1. **Warranty and Disclaimer**
	1. General Mutual Warranty. Each party represents and warrants that it will comply with all applicable law, and it has all rights required to enter into and perform under this Agreement.
	2. Services Warranty. EngagedMD warrants to Customer that EngagedMD will perform the EngagedMD Services hereunder in a professional and workmanlike manner. Customer’s sole remedy, and EngagedMD’s sole liability and obligation, for EngagedMD’s breach of this EngagedMD Services warranty will be EngagedMD’s reasonable commercial efforts, at no additional charge, to re-perform the EngagedMD Services in a professional and workmanlike manner. Customer must report any breach of this EngagedMD Services warranty to EngagedMD within 30 days of Customer’s detection of any such breach in order to receive such remedy.
	3. Warranty Disclaimer.
2. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, ALL EXPRESS OR IMPLIED CONDITIONS, TERMS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, SATISFACTORY QUALITY, ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, OR ANY OTHER MATTER PERTAINING TO ENGAGEDMD SERVICES, OTHER SERVICES, THE RESULTS DERIVED FROM THE USE OF ENGAGEDMD SERVICES AND OTHER SERVICES, AND THIS AGREEMENT, ARE HEREBY EXCLUDED AND DISCLAIMED TO THE EXTENT ALLOWED BY APPLICABLE LAW. EngagedMD does not warrant that any EngagedMD Services will be uninterrupted or error-free, nor that the EngagedMD Services are not susceptible to intrusion, attack or computer virus infection.
3. IN ADDITION, CUSTOMER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY ENGAGEDMD, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS (INCLUDING WITHOUT LIMITATION ITS CUSTOMER SERVICE OR SUPPORT REPRESENTATIVES), WHETHER DIRECTLY OR INDIRECTLY, WILL (a) CONSTITUTE PERSONAL, LEGAL, MEDICAL OR FINANCIAL ADVICE OR (b) CREATE A WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE WEBSITE OR THE ENGAGEDMD SERVICES. CUSTOMER SHOULD NOT RELY ON ANY SUCH INFORMATION OR ADVICE, AND CUSTOMER SHOULD CONSULT AN APPROPRIATE PROFESSIONAL FOR SPECIFIC ADVICE TAILORED TO CUSTOMER’S SITUATION.
4. **Indemnities and Other Proceedings**

## Indemnity by EngagedMD.

## EngagedMD will, at its expense, defend, indemnify and hold harmless Customer from and against any third party claims, actions, liabilities, damages, costs or expenses, including reasonable attorneys’ fees and costs, awarded against Customer or agreed upon by EngagedMD in settlement (“**Claims**”) to the extent such Claim is based on an allegation that the EngagedMD Services, EngagedMD Platform or EngagedMD Site, as provided by EngagedMD to Customer under this Agreement and used within the scope of this Agreement, directly infringes, violates or misappropriates any third party copyright, patent, trade secret or other intellectual property right. The foregoing provisions of this Section 8.1(a) set forth EngagedMD’s sole and exclusive obligations, and Customer’s sole and exclusive remedies, with respect to infringement of intellectual property rights by the EngagedMD Services.

## Injunctions. If Customer's use of any of the EngagedMD Services hereunder is, or in EngagedMD's opinion is likely to be, enjoined due to the type of infringement specified in Section 8.1(a) above, or if a Claim is brought against Customer due to the type of infringement specified in Section 8.1(a) above, then EngagedMD may, at its sole option and expense: (i) procure for Customer the right to continue using such EngagedMD Services under the terms of this Agreement; (ii) replace or modify such EngagedMD Services so they are non-infringing and substantially equivalent or better in function to the EngagedMD Services which are or may be enjoined, or are the subject of the Claim; or (iii) if options (i) and (ii) above cannot be accomplished despite EngagedMD's commercially reasonable efforts, then either party may terminate this Agreement upon written notice to the other party and EngagedMD will remit to Customer any pre-paid, unused fees for the terminated EngagedMD Services.

## Notwithstanding the terms of Section this 8.1, EngagedMD will have no liability for any Claim of any kind due to the type of infringement specified in Section 8.1(a) above to the extent it results from: (i) modification or alteration of the EngagedMD Services by Customer or any third party, without EngagedMD’s express written authorization and direct supervision; (ii) the combination, operation or use of any EngagedMD Services supplied hereunder with documentation, services, processes, equipment, devices or software not supplied by EngagedMD to the extent such a Claim would have been avoided if the EngagedMD Services were not used in such combination; (iii) failure of Customer to use updated or modified EngagedMD Services provided by EngagedMD to avoid infringement; (iv) Customer Content and/or compliance by EngagedMD with designs, plans, instructions or specifications provided by or on behalf of Customer; or (v) Customer’s breach of this Agreement.

## Indemnity by Customer. Customer will, at its expense, defend, indemnify and hold harmless EngagedMD from and against any third party Claims (including by any Patient) to the extent such Claim is based on or arises out of: (a) any act or omission of Customer or any Patient; (b) personal injury, death or property damage not caused solely and directly by EngagedMD; (c) the breach (by Customer or EngagedMD) of any informed consent obligations applicable to any Patient; (d) the breach by Customer of applicable laws including, without limitation, privacy laws; (e) any disputes between Customer and any Patient; and/or (f) any Customer Content.

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## Process. The indemnified party will: (a) promptly notify the indemnifying party in writing of any Claims which are the subject of this Section 8, provided, however, that failure to provide such prompt notice will not reduce the indemnifying party’s obligations under this Section 8 unless the indemnifying party is materially prejudiced by such delay in notice; (b) grant the indemnifying party control of the defense and settlement of the Claims; and (c) provide the indemnifying party, at the indemnifying party’s expense, with reasonable assistance and information requested by the indemnifying party for the defense and settlement of the Claims. The indemnified party may engage counsel of its choice at its own expense. The indemnifying party will keep the indemnified party informed as to the status of the indemnifying party’s efforts and reasonably consult with the indemnified party. The indemnifying party will not be liable for any settlement of an action effected without its written consent (which consent will not be unreasonably withheld or delayed), nor will the indemnified party settle any such action without the written consent of the indemnifying party (which consent will not be unreasonably withheld or delayed). The indemnifying party will have no right to admit liability by the indemnified party in any Claim, or settlement thereof, without the indemnified party’s prior written consent, which will not to be unreasonably withheld or delayed.

## Other Proceedings. EngagedMD will not be required or compelled to be a party to, assist in, or otherwise participate, whether as a witness or in any other capacity, in any investigation, audit, action or proceeding, whether judicial, arbitral or administrative, instituted by Customer, any Patient, or any third party (collectively, a “**Proceeding**”), provided, however, that in the event that EngagedMD is made a party to or is threatened to be made a party to, or otherwise becomes involved in, any such Proceeding (including, without limitation, via deposition, interrogatories or otherwise subpoenaed for any purpose), then in any such case Customer agrees to pay in advance, upon receipt of written demand therefor from EngagedMD, any and all expenses that may be incurred by EngagedMD in connection therewith, including, without limitation, reasonable attorneys' fees, disbursements and retainers, court costs, transcript costs, fees of accountants, experts and witnesses, travel expenses, and all other expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness or other participant in a Proceeding.

1. **Limitation of Liability**
	1. EXCEPT FOR A PARTY’S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, CUSTOMER’S OBLIGATIONS WITH RESPECT TO OTHER PROCEEDINGS UNDER SECTION 8 ABOVE, AMOUNTS OWED BY CUSTOMER UNDER THIS AGREEMENT, OR EITHER PARTY’S INFRINGEMENT OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, NOTWITHSTANDINGANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, NEITHER PARTY NOR ITS THIRD PARTY SUPPLIERS AND LICENSORS WILL BE LIABLE TO THE OTHER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, (a) FOR ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE FEES PAID TO ENGAGEDMD HEREUNDER DURING THE 12-MONTH PERIOD BEFORE THE CLAIM OR CAUSE OF ACTION AROSE, OR (b) FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST DATA, WHETHER OR NOT SUCH LOSSES OR DAMAGES ARE FORESEEABLE, OR (c) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (d) FOR LOSS OR CORRUPTION OF DATA OR INTERRUPTION OF USE. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.
	2. Customer understands and agrees that (a) the EngagedMD Services are a tool and not a replacement for Customer’s obligations and responsibilities under the law to obtain informed written consent from Patients for medical procedures, (b) the EngagedMD Services only supplement and facilitate Customer’s legal obligations and responsibilities with respect to the Patient informed consent process for Patient relationships established outside of and separately from this Agreement; (c) Customer must obtain a Patient’s informed consent as required by law; and (d) while EngagedMD strives to ensure the accuracy, completeness and consistency with current medical thinking of the educational modules presented to Patients as part of the EngagedMD Services, it is Customer’s sole responsibility and obligation to educate and inform its Patients with respect to medical procedures. Customer understands and acknowledges that it is Customer’s responsibility to view all of the educational modules in advance of authorizing such educational modules to be presented to its Patients, and to be familiar with the content of the educational modules Customer assigns to its Patients. If Customer is not satisfied for any reason with any portion of the educational modules to be presented to its Patients as part of the EngagedMD Services, then Customer should not authorize the Patient to view such educational modules or Customer should discuss with and further educate its Patients with respect to those portions of the educational modules with which Customer disagrees or desires to supplement.

1. **Term and Termination**

# Term of Agreement. This Agreement commences on the Effective Date and will continue in effect, unless earlier terminated in accordance with this Agreement, for the Subscription Term (“Initial Subscription Term”). Unless otherwise agreed by the parties, upon the end of the Initial Subscription Term, the Subscription Term will automatically renew on a month-to-month basis (regardless of the length of the Initial Subscription Term) at then-current EngagedMD Services fees, if any, unless either party provides at least 30 days’ advance written notice of its intent to not renew the Subscription Term. The Initial Subscription Term and each renewal of the Subscription Term together are referred to herein as the Subscription Term.

# Termination for Convenience.

1. EngagedMD may terminate this Agreement or the EngagedMD Services at any time with or without cause, and with or without notice. EngagedMD will have no liability to Customer or any third party because of such termination. Any such notice provided by EngagedMD will be provided via email using the email address Customer provided when completing Customer’s registration with EngagedMD, as updated by Customer from time to time.
2. Customer may terminate this Agreement by notifying EngagedMD of its intent to terminate at least 5 calendar days before the renewal date of the Subscription Term. Such notification may be provided via the online method designated by EngagedMD (e.g. in Customer’s account or via email to a designated EngagedMD email account).

# Termination for Breach. Each party will have the right to terminate this Agreement if the other party breaches any term of this Agreement, including but not limited to nonpayment, and fails to cure such breach within 30 days after written notice thereof.

# Immediate Termination. Either party may immediately terminate this Agreement upon delivery of written notice if: (a) the other party makes an assignment for the benefit of creditors, or (b) the other party becomes the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets.

# Effect of Termination. Upon termination of this Agreement: (a) EngagedMD will terminate Customer’s access to the applicable EngagedMD Services, except with regard to stored Informed Consent Process Documentation as set forth in Section 2.3 above; (b) the provisions of Section 6.6 above will apply with respect to each party’s Confidential Information; and (c) EngagedMD will send Customer an email via the email address Customer provided when completing Customer’s registration with EngagedMD, as updated by Customer from time to time, with respect to the disposition of Customer’s Informed Consent Process Documentation. Such email notice will contain directions for how Customer may download Customer’s Informed Consent Process Documentation from the EngagedMD Site and, if Customer so desires, how to request that EngagedMD continue to store Customer’s Informed Consent Process Documentation at a rate of $25/month for up to 100GB. If Customer’s Informed Consent Process Documentation is larger than 100GB, then EngagedMD will negotiate in good faith with Customer applicable storage charges. If within 30 days of the date of such email notice Customer downloads its Informed Consent Process Documentation or does not respond to EngagedMD with a request to store such Informed Consent Process Documentation, then EngagedMD will remove Customer’s Informed Consent Process Documentation from the EngagedMD Site, destroy such removed Customer Informed Consent Process Documentation, and send Customer an email notice of such removal and destruction.

# Nonexclusive Remedy. Except as otherwise set forth in this Agreement, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party. Termination of this Agreement will not relieve Customer of its obligation to pay all fees and expenses that accrued before such termination.

# Survival. The rights and obligations of the parties contained in Sections 1, 2.8, 3.5, 3.6, 3.7, 3.8, 4, 5, 6, 7, 8, 9, 10.5, 10.6, 10.7, 10.8 and 11, and any other provisions in the Agreement which by their nature or implication survive, will survive the termination of this Agreement.

# Remedies. The breach of Sections 4 and 6 may cause irreparable harm to one or both parties, the extent of which would be difficult to ascertain. Accordingly, in addition to any other remedies to which such other party may be legally entitled, each party will have the right to seek injunctive relief in the event of a breach of such sections by the other party without the requirement of posting a bond.

1. **Miscellaneous**

## Assignment. Except in connection with a change of control, change in majority ownership or the sale of all or substantially all of the assets of Customer, Customer will not assign or transfer any of the rights or obligations under this Agreement without the prior written consent of EngagedMD. Any attempted assignment in violation of this section will be void. This Agreement and all of its provisions will inure to the benefit of and become binding upon the parties and the successors and permitted assigns of the respective parties.

##  Governing Law.

## If Customer’s principle place of business is in the United States or any other country except England and Wales, then this Agreement will be governed by the laws of the State of Maryland and the United States, without reference to conflict of laws principles.

## If Customer’s principle place of business is in England and Wales, then this Agreement will be governed by the laws of England and Wales, without reference to conflict of laws principles.

## This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods.

## Arbitration. Except for any claims seeking injunctive relief and as set forth below, any claim, dispute or controversy arising out of or in connection with or relating to this Agreement or the breach or alleged breach hereof (including, without limitation, any disputes over indemnification herein) will be submitted by the parties to binding arbitration by the American Arbitration Association (“**AAA**”), under the commercial rules then in effect for AAA, except as provided herein. All proceedings will be held in Montgomery County, Maryland. The arbitration will be heard by one or more neutral arbitrators chosen in accordance with the AAA rules, one of whom will be an attorney with preferably no fewer than ten years of practical experience in the relevant field of the dispute. The arbitration proceedings will be governed by United States Federal Arbitration law and by the AAA rules without reference to state arbitration law pursuant to Section 11.2(a) or arbitration laws in England and Wales pursuant to Section 11.2(b), as applicable. The award rendered by the arbitrators will include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses (and such amounts shall be excluded from the limitation of liability set forth in Section 9.1), and judgment on such award may be entered in any court having jurisdiction thereof; provided, however, that nothing in this Section will be deemed as preventing a party from seeking relief from the courts as necessary to protect its name, trademarks, proprietary information, trade secrets, know how, copyrights or patents. The party submitting such dispute will request the AAA to (a) allow for the parties to request reasonable production of documents pursuant to the rules then in effect under the Federal Rules of Civil Procedures (without reference to the local rules of any court) and (b) require the testimony to be transcribed. Each party retains the right to seek judicial assistance: (i) to compel arbitration, (ii) to enforce the award of the arbitrator(s), or (iii) at any time before the qualification and appointment of the arbitrator(s), for temporary, interim or provisional equitable remedies and to service of process in any such action by registered mail, return receipt requested, or by any other means provided by law.

## Severability. In the event that any provision of this Agreement will be determined to be invalid or unenforceable by a body of competent jurisdiction, that provision will be limited or severed only as necessary to eliminate such invalidity or unenforceability. The parties will in good faith negotiate a valid, enforceable substitute provision that most nearly effects their original intent in entering into this Agreement including, without limitation, the economic intent. The other provisions of this Agreement will remain in full force and effect.

## Notices. All notices, demands or consents required or permitted under this Agreement will be in writing. Notice will be considered effective on the earlier of actual receipt or: (a) the business day following transmission if sent by facsimile followed by written confirmation, (b) one business day after posting when sent via an express commercial courier, or (c) five days after posting when sent via certified mail, with tracking capability and signature required. Notice will be sent to the address for each party set forth on the cover page of this Agreement, or at such other address as will be given by either party to the other in writing.

## Independent Relationship. The parties acknowledge that neither is an agent of the other. Each party agrees that it will not hold itself out as an agent of the other, directly or indirectly. Neither party will have the power to bind the other party or incur obligations on the other party's behalf.

## Publicity and Use of Name. EngagedMD may list Customer, displayed with Customer’s trademark or logo, as an EngagedMD customer on the EngagedMD Site and in other EngagedMD marketing materials. Each party may issue a press release announcing the relationship formed by the Agreement, subject to the prior approval of the other party, not to be unreasonably withheld or delayed.

## Force Majeure. Neither party will be liable to the other party for any failure or delay in performance due to causes beyond its reasonable control, including but not limited to, fire, earthquake, war, riot, act of God or governmental action.

## Export Law Assurances. Customer will comply with all United States and other applicable laws and regulations including, without limitation, export laws and regulations.

## No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties and their authorized successors and permitted assigns. Nothing is intended to confer upon any person or entity, other than the parties and their authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

## Headings. The headings used in this Agreement are for reference only and do not change the meaning of any provision of this Agreement, and will not be used in interpretation of any provision of this Agreement. This Agreement will be construed without regard to any presumption or rule requiring construction against the drafting party.

## Waiver and Amendment. No modification, amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by each party’s duly authorized representative. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

## Order of Precedence. In the event of conflict, the following order of precedence will apply: (a) the Registration Form, (b) the General Terms and Conditions, and (c) any exhibits, addenda or documents attached or incorporated by reference to this Agreement.

## Counterparts. This Agreement may be executed in two or more identical counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute the Agreement when a duly authorized representative of each party has signed a counterpart. The parties may sign and deliver this Agreement by facsimile or electronic (i.e., .PDF) transmission. Each party agrees that the delivery of this Agreement by facsimile or electronic transmission will have the same force and effect as delivery of original signatures.

## Entire Agreement. This Agreement, including all schedules and exhibits attached to this Agreement, contains the complete understanding and agreement of the parties and supersedes all prior agreements or understandings, oral or written, relating to the subject matter herein.

**END**

Service Level Agreement

1. Availability of the EngagedMD Services. EngagedMD will use commercially reasonable efforts to ensure that the EngagedMD Services will be generally available. Excluding scheduled and routine system maintenance, EngagedMD will maintain a monthly uptime percentage of >99.0%. EngagedMD will provide prior notice of scheduled maintenance, and will restore access to the EngagedMD Services as soon as is reasonably practicable.

2. Emergency Maintenance. EngagedMD may temporarily suspend service to make emergency repairs to the EngagedMD Services. EngagedMD will provide prior notice where it is reasonably practical under the circumstances and will restore the EngagedMD Services as soon as is reasonably practical.

3. Support. EngagedMD will provide telephone and email technical support during regular Business Hours. “Business Hours” means 9 a.m. to 5 p.m. Eastern Time, Monday through Friday, excluding EngagedMD holidays.

3.1 Technical Support Contact Information

E-Mail – support@engagedmd.com

All assistance will be given in English. Cases will be opened upon EngagedMD’s receipt of request or identification of an issue, and incidents will be routed and addressed according to the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Severity Level** | **Error State Description** | **Target Response Time** | **Target Resolution Within** |
| 1 – Critical  | The defect affects critical functionality of the Platform or critical data. It does not have a workaround. | 2 Business Hours | 4 Business Hours after recreation of the error  |
| 2 – Major | The defect affects major functionality of the Platform or major data. It has a workaround but is not obvious and is difficult. | 4 Business Hours | 8 Business Hours after recreation of the error |
| 3 – Minor | The defect affects minor functionality of the Platform or non-critical data. It has an easy workaround. | 1 Business Day | Determined on case by case basis |
| 4 – Trivial | The defect does not affect functionality or data. It does not require a workaround. It does not impact productivity or efficiency. It is merely an inconvenience. | 2 Business Days | Determined on case by case basis  |

4.Disaster Recovery**.** Throughout the term of this Agreement, EngagedMD will maintain a commercially reasonable disaster recovery plan and the capacity to execute such plan. EngagedMD reserves the right to modify its disaster recovery plan in its reasonable discretion from time to time. Upon the occurrence of any disaster requiring use of EngagedMD’s disaster recovery plan, EngagedMD will promptly notify Customer of same, and will provide to Customer equal access as EngagedMD’s other similarly placed users in the provision of the EngagedMD Services. If a major disaster occurs, EngagedMD will use commercially reasonable efforts to restore full operations to the EngagedMD Services within 48 hours after the disaster event occurs.

5. Security. Throughout the term of this Agreement, EngagedMD will maintain and comply with commercially reasonable security policies including, without limitation, those security policies required by law. EngagedMD reserves the right to modify its security policies in its reasonable discretion from time to time.