

Trial & Subscription Agreement

This is a legally binding agreement between MEDICAL Informatix, Inc., a New York Corporation (“MIFO Inc.”), and you and your medical practice, business or similar organization (collectively, the “Practice”).

By clicking “I AGREE” or by otherwise signing up for a MEDICAL INFORMATIX INC. account, or by accessing or using the MEDICAL INFORMATIX INC. software and services, you and your Practice are entering into this Agreement and agree to be bound by its Terms and Conditions.

Please read this Agreement carefully and do not sign-up for an account or use the MEDICAL INFORMATIX INC. software and services if you or the Practice is unwilling or unable to abide by the Terms and Conditions of this Agreement.

The Practice and MEDICAL INFORMATIX INC. are collectively referred to as the “Parties”.

RECITALS

Whereas the Practice is a medical practice licensed to practice medicine;

Whereas MEDICAL INFORMATIX INC. has developed and implemented a web-based software application, which is being licensed by MEDICAL INFORMATIX INC. pursuant to and in accordance with the terms and conditions of this Agreement as a Service to the Practice (the “Services”); and

Whereas the Practice desires to license use of the Services from MEDICAL INFORMATIX INC. pursuant to the terms and conditions of this Agreement,

Now therefore, in good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

Trial & Subscription Agreement

As an inducement to MEDICAL INFORMATIX INC. to provide the Practice with a free trial of the Services (“Free Trial”), the Practice hereby agrees to the following terms and conditions:

1. **Trial Term and Termination.**
 1. Subject to MEDICAL INFORMATIX INC. ’ rights to modify or terminate the Trial Period (as defined below), the trial period shall commence on the day the Practice receives access to the Services and ends fourteen (14) days thereafter (such period is referred to as the “Trial Period”).
 2. MEDICAL INFORMATIX INC. may immediately suspend or terminate the Free Trial at any time (whether before, during, or after the Trial Period), without notice to the Practice, and without any liability whatsoever.
 3. Access and use of Services will immediately cease at the end of the Trial term, unless and until you or your Practice complete the ordering process for the Subscription to the Services, in which case your right to use the Services will immediately convert to a Subscription to the Services.
 - 4.
2. **Trial License Grant. MEDICAL INFORMATIX INC.** hereby grants the Practice, upon the terms and conditions contained in these Trial Terms and Conditions, a personal, limited, non-transferable, non-exclusive, non-sublicensable, licenses for the identified professionals associated with the Practice, (collectively, “Licensed Users”) to use the Services, during the Trial Period (i) in the ordinary course of the Practice’s normal and ordinary internal business, and (ii) in accordance with applicable federal, state, and local laws, rules, and regulations (“Intended Purpose”). The Practice agrees that the Services shall not be used by any person or entity other than the Licensed Users for the Intended Purpose and shall prevent any subcontractor or agent of the Practice or any other third party from using the Services.
3. **Trial License Restrictions.**
 1. The Practice acknowledges that the Services provided during the Trial period may only be a subset of the Services that are

available to users who have paid for a Subscription to the Services.

2. The Practice shall not, and shall not permit any third party (including, but not limited to, affiliates, employees or agents of any third party) to: (i) duplicate, modify, decompile or reverse engineer any of the Services for any reason; or (ii) resell the Services to any unrelated third party.
3. The Practice shall not, and shall not allow anyone to: (1) circumvent any security feature of the Services; (2) use the Services to provide services to any third party; (3) permit any third party to view, use, access, or copy the Services; or (4) disclose, publish, broadcast, sell, or otherwise redistribute the Services. The Practice shall maintain the confidentiality and security of any password, account, and other identification information provided with respect to the Services and not to provide it to any other person or entity (including, but not limited to affiliates, employees or agents of any third party). The Practice shall be responsible for all use of, and activities that occur under, its password(s), account, and other identification information and for any actions that take place through its access to the Services (whether conducted by the Practice or another).
4. The Practice agrees to use the Services only for the Intended Purpose.
5. Information provided or entered into the Services during the Trial and any configurations or customizations made to your account will be permanently lost unless you purchase a Subscription to the Services before the end of the Trial.
4. **Limitation of Liability.** The Services, support, documentation and any other Services, data and content provided by MEDICAL INFORMATIX INC. under these Trial Terms and Conditions or as part of the Services are provided "As Is" and "As Available" with all faults, and without warranty of any kind.
5. The Practice acknowledges and agrees that **MEDICAL INFORMATIX INC.** shall have no liability with respect to the data provided by the Practice in utilizing the Services.
6. The Practice expressly agrees and acknowledges that use of and receipt of Services are at the Practice's sole risk, including errors in information and content.
7. The Services may be used to access and transfer information over the internet. The Practice acknowledges and agrees that MEDICAL INFORMATIX INC. does not operate or control the internet and (I)

viruses, worms, trojan horses, or other undesirable data or software; or (II) unauthorized users (e.g. hackers) may attempt to obtain access to and damage Practice's computers, networks or websites. MEDICAL INFORMATIX INC. shall not be responsible for such activities. MEDICAL INFORMATIX INC. does not and cannot control the flow of data to or from MEDICAL INFORMATIX INC. 's network and other portions of the internet. MEDICAL INFORMATIX INC. will use commercially reasonable efforts to take all actions it deems appropriate to avoid and remedy such events. MEDICAL INFORMATIX INC. cannot guarantee that such events will not occur. Accordingly, MEDICAL INFORMATIX INC. disclaims and all liability resulting from or related to such events.

8. MEDICAL INFORMATIX INC. reserves the right to modify, change, or supplement these Trial Terms and Conditions at any time by posting new Trial Terms and Conditions on MEDICAL INFORMATIX INC. ' applicable website. Such new Trial Terms and Conditions are effective upon posting with five (5) days' notice by MEDICAL INFORMATIX INC. on MEDICAL INFORMATIX INC. ' applicable website. Therefore, the Practice hereby agrees to be responsible for regularly and periodically accessing and reviewing MEDICAL INFORMATIX INC. ' website.

MEDICAL INFORMATIX INC.

Subscription Agreement

If the Practice has purchased a license to or has otherwise subscribed to the Services as indicated in **MEDICAL INFORMATIX INC.** 's applicable records or if the Practice otherwise continues to access or use the Services after the expiration of any applicable trial period, the Practice hereby agrees to the following terms and conditions (which Terms and Conditions when effective supersede and replace the Trial Terms and Conditions above):

1. LICENSE AND USE.
 - a. License Grant. **MEDICAL INFORMATIX INC.** hereby grants the Practice, upon the terms and conditions contained herein, one or more limited, non-transferable, non-sublicensable, user licenses to the identified professionals associated with the Practice (collectively, "Licensed Users") to use the Services

during the Term (as defined in Section 10 below) in accordance with **MEDICAL INFORMATIX INC.**'s then current documentation and only: (i) in the ordinary course of the Practice's normal and ordinary internal business, and (ii) in accordance with applicable federal, state, and local laws, rules, and regulations ("Intended Purpose").

- i. The Practice covenants and agrees that the Services shall not be used by any person or entity other than the Licensed Users for the Intended Purpose and shall prevent any subcontractor or agent of the Practice or any other third party from using the Services.
- b. **License Restrictions.** In furtherance of Section 1(a) hereof, the Practice shall not, and shall not permit any third party (including, but not limited to, affiliates, employees or agents of any third party) to: (i) duplicate, modify, decompile or reverse engineer any of the Services for any reason; or (ii) resell the Services to any unrelated third party. This is a license, not a sale. The Practice shall not, and shall not allow anyone to: (1) circumvent any security feature of the Services; (2) use the Services to provide to any third party; (3) permit any third party to view, use, access, or copy the Services; or (4) disclose, publish, broadcast, sell, or otherwise redistribute the Services. The Practice shall maintain the confidentiality and security of any password, account, and other identification information provided with respect to the Services and not to provide it to any other person or entity (including, but not limited to affiliates, employees or agents of any third party). The Practice shall be responsible for all use of, and activities that occur under, its password(s), account, and other identification information and for any actions that take place through its access to the Services (whether conducted by the Practice or another). The Practice agrees to use the Services only for the Intended Purpose.
- c. **Modification.** **MEDICAL INFORMATIX INC.** reserves the right to modify the Services and their respective features and functionality at any time, without notice or warning and without liability.
- d. **Reservation of Rights.** **MEDICAL INFORMATIX INC.** reserves the right to display the **MEDICAL INFORMATIX INC.** brand, trademarks, logo, and any image, name, brand or label which **MEDICAL INFORMATIX INC.** has rights to, on any and all

of the Services. **MEDICAL INFORMATIX INC.** reserves all rights not expressly granted to the Practice in this Agreement.

- e. **Suspension of Access.** **MEDICAL INFORMATIX INC.** may, in its sole discretion, suspend the Practice's access to the Services for any of the following reasons (i) to prevent damages to, or degradation of, the Services; (ii) to comply with any law, regulation, court order, or other governmental request; (iii) if the Practice breaches any provision set forth in this Agreement; (iv) to otherwise protect **MEDICAL INFORMATIX INC.** from potential legal liability; and/or (v) in the event the License Fee (as such term is defined in Section 2(a) hereof) remains unpaid for more than fifteen (15) or more days from the date such fee is due to **MEDICAL INFORMATIX INC.** from the Practice. **MEDICAL INFORMATIX INC.** may, as an accommodation to the Practice, provide the Practice with notice prior to or promptly following any suspension of the Services, but is under no legal obligation to do so. **MEDICAL INFORMATIX INC.** will restore access to the Services as soon as the event giving rise to suspension has been resolved.
- f. **User Compliance.** The Practice represents, warrants and covenants that it will cause any and all of its Licensed Users to comply with the terms of this Agreement and shall be primarily responsible for all use of the Services by its Licensed Users and such Licensed Users failure to comply with the terms and conditions of this Agreement.
- g. **HIPAA.** In maintaining, using and affording access to the Practice's Health Information (as defined in Section 11(c)(iii)) in accordance with this Agreement, **MEDICAL INFORMATIX INC.** will, in accordance with the requirements of The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as such requirements are informed by the guidance given by the United States Department of Health and Human Services (or any office, department or agency operating thereunder, "HHS"):
 - i. Not use or disclose such information except as permitted or required by this Agreement or as required by law (as such term is defined in 45 CFR §164.103);
 - ii. Use appropriate safeguards consistent with the requirements of the Security Rule with respect to the Practice's Health Information to prevent the use or disclosure of such information in a manner inconsistent with the provisions of this Agreement;

- iii. Report to the Practice any use or disclosure of the Practice's Health Information not provided for by this Agreement of which **MEDICAL INFORMATIX INC.** becomes aware, including breaches of the Practice's Health Information that meets the definition of "unsecured protected health information" under HIPAA, in each case as required by §164.410 of HIPAA, and any security incident (as defined by HIPAA) involving the Practice's Health Information of which we become aware;
- iv. In accordance with §§164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, as applicable, ensure that any subcontractors that create, receive, maintain or transmit the Practice's Health Information on **MEDICAL INFORMATIX INC.**'s behalf agrees to the same restrictions, conditions, and requirements that apply to **MEDICAL INFORMATIX INC.** with respect to such information (as such requirement is interpreted or applicable in connection with or under HIPAA); and **MEDICAL INFORMATIX INC.** obtains satisfactory assurances (as such term is interpreted or applicable in connection with or under HIPAA) that such subcontractors will appropriately safeguard such information (it being understood, for the avoidance of doubt, that other users of the Services are not our subcontractors);
- v. Make available to the Practice, the Practice's Health Information in furtherance of the Practice's obligations under §164.524 of the Privacy Rule;
- vi. Make available to the Practice, the Practice's Health Information in furtherance of the Practice's obligations to amend and incorporate any amendments to such information in accordance with §164.526 of the Privacy Rule;
- vii. Maintain and make available the Practice's Health Information to provide an accounting of disclosures in accordance with §164.528 of the Privacy Rule;
- viii. Make our internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by **MEDICAL INFORMATIX INC.** on the Practice's behalf, available to the Secretary of HHS for purposes of determining the Practice's compliance with the Privacy Rule; and

- ix. At termination of this Agreement and provided that all fees payable by the Practice to **MEDICAL INFORMATIX INC.** have been fully paid, **MEDICAL INFORMATIX INC.** will provide the Practice with a copy of the Practice's Health Information in an electronic form that is accessible through commercially available hardware and software. The Practice may have to purchase such hardware and software from third parties in order to access the Practice's data, and the Practice may have to configure its systems in order to use the Practice's data in its practice. Upon termination and provided that all fees payable by the Practice to **MEDICAL INFORMATIX INC.** have been fully paid, **MEDICAL INFORMATIX INC.** will, if feasible, return or destroy all Protected Health Information received from, or created or received by **MEDICAL INFORMATIX INC.** on the Practice's behalf that **MEDICAL INFORMATIX INC.** still maintains in any form, and retain no copies of such information; or, if such return or destruction is not feasible (whether for technical, legal, regulatory or operational reasons), extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

2. LICENSE FEES.

- a. Fees for the subscription Services are due in advance (or billed monthly or annually). Payment obligations are non-cancelable and fees paid are non-refundable. All fees are in United States Dollars. If the Practice terminates subscription to the Services prior to the end of the then effective Term the Practice must immediately pay any then unpaid Service Fees associated with the remainder of such Subscription Term. **MEDICAL INFORMATIX INC.** may change our Service Fee structure at any time upon thirty (30) days' notice to you.
- b. The Practice must provide valid and updated credit card information in order to purchase a subscription to the Services. All payment must be made from a payment source on which you are the named account holder. You authorize us to charge such credit card in advance on a monthly basis prior to the beginning of each month or as otherwise set forth. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information. Failure to provide complete and/or accurate billing and contact information may

result in the suspension or termination of the Subscription Services. Payments made by credit card, debit card or certain other payment instruments for the Subscription Services are billed and processed by our third party service provider.

- c. Failure to pay fees within ten (10) days of the due date may result in termination or suspension of access to the subscription Services without notice. A reconnection fee equal to one (1) month's Service Fees shall be assessed to re-establish connection after termination due to non-payment.
- d. During the Term, the Practice shall timely pay **MEDICAL INFORMATIX INC.** when due the provider fee(s) set forth. The License Fee is due and payable on the dates and intervals (i.e. monthly or annually) designated by **MEDICAL INFORMATIX INC.** during the Term and shall be charged to the Practice's: (i) credit card on file with **MEDICAL INFORMATIX INC.**; or (ii) bank account on file with **MEDICAL INFORMATIX INC.** through ACH transfer from such bank account. The Practice hereby authorizes **MEDICAL INFORMATIX INC.** to charge its credit card and/or bank account on file with **MEDICAL INFORMATIX INC.** on the dates and intervals designated by **MEDICAL INFORMATIX INC.** (which period is subject to change at any time at **MEDICAL INFORMATIX INC.**'s option).
- e. **Taxes.** The Practice shall be responsible for and shall pay **MEDICAL INFORMATIX INC.** for any sales, use, import, excise, value added or other taxes or levies associated with this Agreement and the Services, excluding any taxes based on the net income of **MEDICAL INFORMATIX INC.** , unless customer is tax exempt and provides **MEDICAL INFORMATIX INC.** with sufficient documentation evidencing such tax exempt status.

3. INTELLECTUAL PROPERTY.

- a. **IP Ownership.** **MEDICAL INFORMATIX INC.** shall own all rights, title, interest and intellectual property rights in (i) the Services (inclusive of the items, materials and data contained therein), (ii) all materials and technologies used in and/or in connection with the Services, and (iii) any and all materials and technologies provided by **MEDICAL INFORMATIX INC.** , and/or developed by **MEDICAL INFORMATIX INC.** , alone or jointly with others. The Practice shall not use any information or data disclosed by **MEDICAL INFORMATIX INC.** to the Practice in connection with this Agreement to contest the validity of any **MEDICAL INFORMATIX INC.** intellectual property. Any such use

of **MEDICAL INFORMATIX INC.** 's information and data shall constitute a material breach of this Agreement.

4. SUPPORT AND UPDATES.

- a. **Support.** In connection with the license granted hereunder, during its then current support hours, **MEDICAL INFORMATIX INC.** shall provide reasonable off-site technical and other support for the Practice and the Licensed Users.
- b. **Updates.** **MEDICAL INFORMATIX INC.** may, from time to time, in its sole discretion, provide Updates to the Practice, such updates may be provided across the platform in the cloud. For purposes of this Agreement, "Updates" means changes and improvements to the Services that (i) relate to the operating performance of the Services, but do not change the basic function of the Services; (ii) are intended for general commercial use in connection with the Services; and (iii) are provided generally to **MEDICAL INFORMATIX INC.** 's other customers without additional charge. Updates do not necessarily include new releases or versions of the Services for which **MEDICAL INFORMATIX INC.** , in its sole and exclusive discretion, imposes an additional charge. **MEDICAL INFORMATIX INC.** may, however, in its sole and exclusive discretion, provide Updates to the Practice that include new functionality. Any and all Updates are deemed part of the Services and shall be protected and governed by the terms and conditions of this Agreement and subject to the license granted in Section 1.

5. CONFIDENTIALITY

- a. **Confidential Information.** The Practice acknowledges and agrees that the Services constitute valuable and confidential proprietary information and intellectual property of **MEDICAL INFORMATIX INC.** , that are protected under civil and criminal law and under the laws of patent, copyright and trade secret, and, except as expressly provided herein, shall not be disclosed in any form by the Practice to any unauthorized third party. Each Party agrees that all information supplied by one Party and its affiliates and agents (collectively, the "Disclosing Party") to the other ("Receiving Party") including, without limitation, (i) source code, trade secrets, databases, designs and techniques, engine protocols, models, displays and manuals, and the selection, coordination, and arrangement of the contents of such materials; and (ii) any unpublished information concerning research activities

and plans, customers, marketing or sales plans, sales forecasts or results of marketing efforts, pricing or pricing strategies, costs, operational techniques, strategic plans, and unpublished financial information, including information concerning revenues, profits and profit margins will be deemed confidential and proprietary to the Disclosing Party, regardless of whether such information was disclosed intentionally or unintentionally or marked as “confidential” or “proprietary” (“Confidential Information”). The Services shall be deemed Confidential Information of **MEDICAL INFORMATIX INC.** .

- b. **Exclusions.** Confidential Information will not include any information or material, or any element thereof, whether or not such information or material is Confidential Information for the purposes of this Agreement, to the extent any such information or material, or any element thereof: (a) has previously become or is generally known, unless it has become generally known through a breach of this Agreement or a similar confidentiality or nondisclosure agreement, obligation or duty; (b) was already rightfully known to the Receiving Party prior to being disclosed by or obtained from the Disclosing Party as evidenced by written records kept in the ordinary course of business or by proof of actual use by the Receiving Party; (c) has been or is hereafter rightfully received by the Receiving Party from a third person (other than the Disclosing Party) without restriction or disclosure and without breach of a duty of confidentiality to the Disclosing Party; or (d) has been independently developed by the Receiving Party without access to Confidential Information of the Disclosing Party. It will be presumed that any Confidential Information in a Receiving Party’s possession is not within exceptions (b), (c) or (d) above, and the burden will be upon the Receiving Party to prove otherwise by records and documentation.
- c. **Treatment of Confidential Information.** Each Party recognizes the importance of the other’s Confidential Information. In particular, each Party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither Party would enter into this Agreement without assurance that such information and the value thereof will be protected as provided in this Section 5 and elsewhere in this Agreement. Accordingly, each Party agrees as follows: (a) the Receiving Party will hold any and all Confidential Information it obtains in strictest confidence and will use and permit use of

Confidential Information solely for the purposes of this Agreement; (b) the Receiving Party may disclose or provide access to its responsible employees who have a need to know and may make copies of Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder; and (c) the Receiving Party currently has, and for so long as it possesses Confidential Information of the Disclosing Party, it will maintain in effect and enforce, rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement, including without limitation written instruction to and agreements with employees and agents who are bound by an obligation of confidentiality no less restrictive than set forth in this Agreement to ensure that such employees and agents protect the confidentiality of Confidential Information. The Receiving Party will instruct and require its employees and agents not to disclose Confidential Information to third parties, including without limitation customers, subcontractors or consultants, without the Disclosing Party's prior written consent; and will notify the Disclosing Party immediately of any unauthorized disclosure or use, and will cooperate with the Disclosing Party to protect all proprietary rights in and ownership of its Confidential Information.

- d. **Non-Exclusive Equitable Remedy.** Each Party acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or third parties to unfairly compete with the other Party resulting in irreparable harm to such party, and therefore, that upon any such breach or any threat thereof, each Party will be entitled to appropriate equitable remedies and may seek and obtain injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss or posting of a bond or other security, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section 5 will constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement in the exclusive discretion of the non-breaching party.

6. NO WARRANTIES

- a. The Services, support, documentation and any other Services, data and content provided by MEDICAL INFORMATIX INC. as

part of the Services are provided “As Is” and “As Available” with all faults, and without warranty of any kind.

- b. The Practice acknowledges and agrees that MEDICAL INFORMATIX INC. shall have no liability with respect to the data provided by the Practice in utilizing the Services.
- c. The Practice expressly agrees and acknowledges that use of and receipt of Services are at the Practice’s sole risk, including errors in information and content.
- d. The Services may be used to access and transfer information over the internet. The Practice acknowledges and agrees that MEDICAL INFORMATIX INC. does not operate or control the internet and (I) viruses, worms, trojan horses, or other undesirable data or software; or (II) unauthorized users (e.g. hackers) may attempt to obtain access to and damage Practice’s computers, networks or websites. MEDICAL INFORMATIX INC. shall not be responsible for such activities. MEDICAL INFORMATIX INC. does not and cannot control the flow of data to or from MEDICAL INFORMATIX INC. ’s network and other portions of the internet. MEDICAL INFORMATIX INC. will use commercially reasonable efforts to take all actions it deems appropriate to avoid and remedy such events. MEDICAL INFORMATIX INC. cannot guarantee that such events will not occur. Accordingly, MEDICAL INFORMATIX INC. disclaims and all liability resulting from or related to such events.

Alternate “Internet” & “Data” warranty language:

Carrier Lines. YOU ACKNOWLEDGE THAT ACCESS TO THE SERVICES WILL BE PROVIDED OVER VARIOUS FACILITIES AND COMMUNICATIONS LINES, AND INFORMATION WILL BE TRANSMITTED OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES (COLLECTIVELY, "CARRIER LINES") OWNED, MAINTAINED, AND SERVICED BY THIRD-PARTY CARRIERS, UTILITIES, AND INTERNET SERVICE PROVIDERS, ALL OF WHICH ARE BEYOND OUR CONTROL. WE ASSUME NO LIABILITY FOR, OR RELATING TO, THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION WHILE IT IS TRANSMITTED ON THE CARRIER LINES, OR ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY DATA OR OTHER INFORMATION ATTRIBUTABLE TO TRANSMISSION ON THE CARRIER LINES. USE OF THE CARRIER LINES IS SOLELY AT YOUR RISK AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, NATIONAL, AND INTERNATIONAL LAWS.

No Warranties. ACCESS TO THE SERVICES AND THE INFORMATION CONTAINED ON THE SERVICES IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, AND WE DISCLAIM ALL WARRANTIES, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE. YOU ARE SOLELY RESPONSIBLE FOR ANY AND ALL ACTS OR OMISSIONS TAKEN OR MADE IN RELIANCE ON THE SERVICES OR THE INFORMATION IN THE SERVICES, INCLUDING INACCURATE OR INCOMPLETE INFORMATION. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF GOODWILL, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EVEN IF WE HAVE BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. WE DISCLAIM ANY AND ALL LIABILITY FOR ERRONEOUS TRANSMISSIONS AND LOSS OF SERVICE RESULTING FROM COMMUNICATION FAILURES BY TELECOMMUNICATION SERVICE PROVIDERS OR THE SERVICES.

Other Users. YOU ACKNOWLEDGE THAT OTHER USERS HAVE ACCESS TO AND ARE USING OUR SERVICES AND THE ACTIONS OF SUCH OTHER USERS ARE BEYOND OUR CONTROL. ACCORDINGLY, WE DO NOT ASSUME ANY LIABILITY FOR OR RELATING TO ANY IMPAIRMENT OF THE PRIVACY, SECURITY, CONFIDENTIALITY, INTEGRITY, AVAILABILITY, OR RESTRICTED USE OF ANY INFORMATION IN THE SERVICES RESULTING FROM ANY USER'S ACTIONS OR FAILURES TO ACT.

Unauthorized Access; Lost or Corrupt Data. WE ARE NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS TO YOUR DATA, FACILITIES OR EQUIPMENT BY PERSONS USING THE SERVICES OR FOR UNAUTHORIZED ACCESS TO, ALTERATION, THEFT, CORRUPTION, LOSS OR DESTRUCTION OF YOUR DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH THE SERVICES, WHETHER BY ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER MEANS. YOU ARE SOLELY RESPONSIBLE FOR VALIDATING THE ACCURACY OF ALL OUTPUT AND REPORTS, AND FOR PROTECTING YOUR DATA AND PROGRAMS FROM LOSS BY IMPLEMENTING APPROPRIATE SECURITY MEASURES. YOU HEREBY WAIVE ANY DAMAGES OCCASIONED BY LOST OR CORRUPT DATA, INCORRECT REPORTS, OR INCORRECT DATA FILES RESULTING FROM PROGRAMMING ERROR, OPERATOR ERROR, EQUIPMENT OR SOFTWARE MALFUNCTION, SECURITY VIOLATIONS, OR THE USE OF THIRD-PARTY SOFTWARE. WE ARE NOT RESPONSIBLE FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH OUR PROVISION OF THE SERVICES.

7. PRACTICE INDEMNIFICATION.

- a. The Practice shall indemnify, defend and hold **MEDICAL INFORMATIX INC.** and its shareholders, officers, directors, employees, agents and representatives harmless from and against any and all Losses incurred by any of them arising out of, resulting from or related to any or all of the following: (a) the Practice's use of the Services in excess of the rights granted in this Agreement; (b) the Practice's material breach of this Agreement; and/or (c) the Practice's use or reliance upon any information, data and/or materials encompassed within the Services generated or produced from or by **MEDICAL INFORMATIX INC.**'s subscribers.

8. LIMITATION OF LIABILITY

- a. The Practice agrees that neither **MEDICAL INFORMATIX INC.** , nor any of its officers, directors, affiliates, employees or agents shall in any event be liable (i) for any direct, indirect, incidental, consequential, punitive, exemplary or any other damages regardless of kind or type whether in contract, tort (including negligence) or otherwise, including but not limited to loss of profits, business interruption, personal injury, property damage, loss of business profits, loss of business information, data or goodwill, regardless of whether **MEDICAL INFORMATIX INC.** knew or should have known the possibility of such damages; or (ii) for any damages whatsoever in connection with or in any way related to the Services. The Practice waives any and all claims, now known or later discovered, that it may have against **MEDICAL INFORMATIX INC.** arising out of this agreement and the Services.
- b. In any event, **MEDICAL INFORMATIX INC.** 's total cumulative liability to the Practice for any and all damages shall not exceed one (1) times the amount of annual license fees paid by the Practice to **MEDICAL INFORMATIX INC.** .

OR

Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THEORY OF LIABILITY, SHALL BE LIMITED TO THE AGGREGATE FEES ACTUALLY PAID BY YOU UNDER THIS AGREEMENT FOR THE ONE (1) MONTH PERIOD PRECEDING THE EVENT FIRST GIVING RISE TO THE CLAIM.

- c. **THIRD PARTY DATA.** The Practice acknowledges and agrees that it shall be solely and fully responsible for it's reliance upon and use of any 3rd party data (e.g. appointment reports, billing information, gap in care or missing service reports) and for any liability or damages arising therefrom. For the purposes of this section 8(c), 3rd party data shall include all data, information and materials submitted to **MEDICAL INFORMATIX INC.** by the Practice, **MEDICAL INFORMATIX INC.** 's customers and subscribers. The Practice further agrees that it will hold harmless and forever release and discharge **MEDICAL INFORMATIX INC.**

from and against any liability or damages arising out of the Practice's use or reliance on any 3rd Party Data.

- d. The Limitation of Liability and types of damages stated in this Agreement are intended by the Parties to apply regardless of the form of lawsuit or claim a Party may bring, whether in tort, contract or otherwise. The Limitations of Liability and disclaimers of warranties provided in this Agreement form an essential basis of the bargain between the Parties and shall continue to apply even if any exclusive remedy hereunder fails of its essential purpose.

9. INJUNCTIVE RELIEF.

- a. The Practice acknowledges that the provisions set forth in Sections 1, 3, 5, 6, 7, 8, 9 and 11 are necessary to protect the business, goodwill, and other proprietary interests of **MEDICAL INFORMATIX INC.** . In the event of any breach or threatened breach of the above cited provisions, the Practice acknowledges **MEDICAL INFORMATIX INC.** shall incur irreparable damage for which there will be no adequate remedy at law. Accordingly, if the Practice or any of its agents or representatives breaches or threatens to breach any of the foregoing provisions, **MEDICAL INFORMATIX INC.** shall be entitled, in addition to and without prejudice to all other rights and remedies available to it, an injunction (without any bond or other security being required therefor) restraining any breach of the foregoing provisions by the Practice or its agents or representatives.

10. TERM AND TERMINATION

- a. **Term.** This Agreement shall commence on the Effective Date and continue until terminated in accordance with Section 10(b) hereof (the "Term"). For purposes hereof, the term "Effective Date" shall mean the date the **MEDICAL INFORMATIX INC.** provides Practice with access to use the Services by providing log-in credentials to the Practice.
- b. **Termination.** Either Party may terminate this Agreement on written notice to the other Party if the other Party is in material breach of its obligations hereunder and fails to cure the breach within thirty (30) days of such written notice. In addition, either Party may, in its sole discretion, elect to terminate this Agreement on written notice to the other Party upon the bankruptcy or insolvency of the other Party or upon the commencing voluntary

or involuntary winding up, or upon the filing of any petition seeking the winding up of the other Party. **MEDICAL INFORMATIX INC.**

- c. **Effect of Termination.** The Practice shall be liable for all fees and charges incurred prior to the date of termination and shall not be entitled to a refund of any License Fees paid by the Practice prior to the date of termination. All such fees are non-refundable. Upon termination, the Practice shall immediately return to **MEDICAL INFORMATIX INC.**, at **MEDICAL INFORMATIX INC.**'s expense, the original and all copies of Confidential Information furnished by **MEDICAL INFORMATIX INC.** to the Practice hereunder.
 - d. **Survival.** In addition to any provisions of this Agreement which continue by its terms, the provisions of Sections 3, 5, 6, 7, 8, 9 and 11 survive termination of this Agreement for any reason.
11. **MISCELLANEOUS**
- a. **Independent Contractors.** Each Party hereto is an independent contractor and nothing contained herein shall be construed to create a partnership, joint venture or agency relationship between **MEDICAL INFORMATIX INC.** and the Practice, nor shall either Party be authorized to bind the other in any way.
 - b. **Remedies Not Exclusive; No Waiver; Amendments.** Except as otherwise specifically provided herein, no remedy referred to in this Agreement is intended to be exclusive. No delay by either Party in exercising any of their respective rights or remedies hereunder shall be deemed to be a waiver of such rights or remedies. No waiver by either Party of any rights under this Agreement or breach by the other Party hereunder shall in any way be a waiver of any such rights in the future or any future breach. Any waiver, amendment or modification of this Agreement must be in writing and signed by the party against whom enforcement is sought.
 - c. **Governing Law and Venue.** This Agreement and the rights of the parties hereto shall be governed by the laws of the State of New York.
 - d. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the

remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

- e. **Force Majeure.** Neither Party shall be liable for damage due to any cause beyond its control, including, without limitation, acts of God, acts of civil or military authority, labor disputes, failure or delay of suppliers or systems, including communications and power systems, fire, sabotage, war, embargo or acts or omissions of the other Party caused by any of such events.
- f. **Compliance with Laws.** The Practice shall comply with all applicable laws and regulations, including, but not limited to, those laws and regulations governing its use of the Services. **MEDICAL INFORMATIX INC.** shall use reasonable efforts to comply with applicable laws and regulations in its performance of this Agreement and the provision of the Services.
- g. **Publicity.** The Practice acknowledges and agrees **MEDICAL INFORMATIX INC.** may identify the Practice as a client in its client listings, web sites, and other promotional materials. In addition, **MEDICAL INFORMATIX INC.** may issue press releases regarding the parties' relationship under this Agreement. At **MEDICAL INFORMATIX INC.**'s request, the Practice agrees to provide **MEDICAL INFORMATIX INC.** with a jpeg file containing its corporate name and logo. The Practice hereby gives permission and grants **MEDICAL INFORMATIX INC.** the license and right to use the logo for the purposes set forth in this Agreement and in its communications with third parties.
- h. **Entire Agreement.** This Agreement constitutes the entire agreement between **MEDICAL INFORMATIX INC.** and the Practice pertaining to the subject matter hereof and supersedes all proposals or prior and contemporaneous agreements or understandings of the parties regarding such matter.

x. Privacy Policy

The Services are provided by us under this Agreement on our website. Your use of our Services is subject to our Privacy Policy. By using the Services, you are consenting to the terms of the Privacy Policy and acknowledged that you have reviewed our Privacy Policy.