

# Terms of Services-SmartClinix

**UPON THE SIGNATURE OF AN OFFICER OF CLIENT, AND UPON EACH AND EVERY USER'S SPECIFIC CONSENT UPON LOGGING INTO THE SOFTWARE PRODUCTS PROVIDED BY SmartClinix, THE TERMS AND CONDITIONS BECOME BINDING ON CLIENT, AND EACH AND EVERY USER WHO IS AFFILIATED WITH CLIENT. YOU SHOULD REVIEW THESE TERMS CAREFULLY.**

These terms of service, along with the License and Services Agreement signed between Client and CURA4U Inc (referred as SmartClinix) , represent the entirety of the agreement between SMARTCLINIX (“We”) and the Client (“Licensee”, “You”). You and SMARTCLINIX are collectively referred to as the “Parties” to this agreement.

In consideration of the rights and benefits conferred under the License & Services Agreement between Client and SMARTCLINIX, each and every user of the products and services provided thereunder hereby agrees to the following terms and conditions as relates to their use of the products.

## **I. Definitions.**

- A. **“Accounting Log”** means records compiled and maintained by SMARTCLINIX regarding the usage of any products by the Licensee, which records may include, for example, a schedule of the time at which a Program was used by the Licensee and/or the amount of time any given Authorized User used the Program or any portion thereof.
- B. **“Agreement”** means these Terms of Service.
- C. **“Authorized User”** mean you and those members of Client who are individually authorized by Client and SMARTCLINIX to have access to SMARTCLINIX Programs and SERVICES.
- D. **“Confidential Information”** means any information concerning our business and includes all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, trade secrets, workflows, customers, source code, data models, marketing plans, methods of operation, financial information, and other information disclosed or submitted, orally or in writing, or through the licensed programs and services or by any other media from one party to another pursuant to this Agreement or any other information that is treated or designated by us as confidential or proprietary, or would reasonably be viewed as confidential or as having value to our competitors. Confidential Information shall not include information that we make publicly available or that becomes known to the general public other than as a result of a breach of an obligation by you. Confidential Information does not include individuals’ health information.
- E. **“SMARTCLINIX Materials”** means all software, Program, Updates and copies of all or portions thereof (including demonstration copies), user Manuals, and other documentation provided by, or on behalf of, SMARTCLINIX to the Licensee including SMARTCLINIX programs, subscription, services, and all files, data, and other materials and information provided through or as part of this agreement.
- F. **“SMARTCLINIX Program and Services”** means all parts of the solution delivered other than third party and Sub- licensed Programs. However, “Programs and Services” or “Programs”, “Software” shall include SMARTCLINIX Programs and Services and third party programs and or services. Your indemnification, confidential information and intellectual property obligations hereunder and for SMARTCLINIX Programs and Services as well as third party programs and services. “Hosted Applications” shall also mean both SMARTCLINIX and third party programs and services.
- G. **“De-Identified Information”** means any and all information, including health information, inputted into the system by the Client or any authorized user of client that can reasonably be stripped of its identifying information and used for any other commercial, research or other business purpose by SMARTCLINIX.
- H. **“Equipment”** means the operating system, hardware, software and networks on or through which the SMARTCLINIX programs are used or accessed by the Licensee Software Support and Maintenance includes telephone support and product upgrades and content usage for drug database and Drug Interaction checks, ICD and CPT upgrades, e- mail and fax support, patch upgrades and any other auxiliary activities that may be conducted to facilitate the use of the SMARTCLINIX Software and Services covered under this Agreement.
- I. **“HIPPA”** means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, including the Privacy Rule and the Security Rule.
- J. **“New Product”** means any software program or other products, subscription or services, other than Programs or Updates which SMARTCLINIX provides to its customers. SMARTCLINIX may charge a separate fee for any New Product as specified or determined by SMARTCLINIX in accordance with the applicable rates.

- K. **“Policies and Procedures”** means our rules, regulations, policies and procedures for access to and use of the SMARTCLINIX Programs and Services including third party programs and services, as changed from time to time and as made available or communicated to You, or posted electronically on our Internet website.
  - L. **“Privacy Rule”** means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
  - M. **“Security Rule”** means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160 and part 164, subparts A and C.
  - N. **“Services”** means any and all services the You request and or SMARTCLINIX deliver.
  - O. the platform or solution designed/build/licensed in accordance with agreed upon scope of work
  - P. **“Term”** means the initial term and all renewal terms of this Agreement.
  - Q. **“Optional Services”** means additional services that SMARTCLINIX may offer to license- holder of SMARTCLINIX Programs from time to time.
  - R. **“Provider”** means healthcare provider who has National Provider Identifier (NPI) such as physician, nurse practitioner or physician assistant .
  - S. **“Non Provider License”** means a limited license for any personnel employed by or under contract with Licensee who do not have a National Provider Identifier (NPI), including but not limited to office managers, nurses, secretaries, or other administrative staff.
  - T. **“System”** means the Licensee’s computer system in which Programs are installed, including allied Equipment, programs, and related optional software, hardware and or auxiliaries.
  - U. **“Updates”** means any changes, enhancements or modifications to a Program, documentation, services, and materials that are provided by SMARTCLINIX to Licensee. The determination of whether or not to issue a change, enhancement or modification designate any change, enhancement, or modification as an Update shall be, in each case, made solely by SMARTCLINIX. Updates do not include new Products, materials, services, documents or major enhancements and or early release versions of any new or existing products and services.
  - V. **“User”** or **“End User”** means you and any other user of the Programs and Services authorized to Client.
  - W. **“User Manuals”** means documentation, and materials that accompany any Program and are published and distributed by or on behalf of SMARTCLINIX to the Licensee from time to time.
  - X. **“Website”** means the website accessible from the URL <https://www.SmartClinix.net/> or other SMARTCLINIX domains or as per agreed upon scope of work .
  - Y. **“Your Health Information”** means health information that you or your Workforce or other USers enter into the SMARTCLINIX Programs.
  - Z. **“Your Site”** means the location you provided us upon registration, and such other location or locations as we may approve from time to time.
- II. **License.** SMARTCLINIX grants to Licensee a nonexclusive, nontransferable license, without the right to sublicense, to access and use the Software hosted by SMARTCLINIX, subject to the terms, conditions, and limitations set forth in this agreement. The Software shall be used with Equipment comparable in operation to the recommended operating system, hardware types, and network setting and peripherals as recommended by SMARTCLINIX from time to time.
- A. Licensee shall use software for its internal business purposes only, and for no other purpose.
    1. Licensee shall limit access to the Software to its employees (or agents) who are registered users. **NO SHARING OF USERNAMES OR PASSWORDS IS PERMITTED.**
    2. Unless otherwise agreed in writing by SMARTCLINIX, Licensee shall not resell its use of the Software, or provide “software as a service”, service bureau facilities, time-sharing, or similar services to or through any third party, or provide supporting operation for any third party using the Software or access to the Software.
    3. No specific provision limiting the use of the Software shall be interpreted as permitting any other uses. Any uses of the Software not expressly permitted under the terms of this Agreement are expressly prohibited.
    4. By clicking accept and using the Software, User hereby agrees to be individually bound by the terms of this Agreement to the same degree as Licensee, and each provision in which the term “Licensee” is used shall apply equally to User individually, provided that Section 4 (Licensee Fees and Payment) shall not apply to User individually.
    5. The Parties may add to this Agreement the license of new Software programs by execution of an software license addendum. Such an addition may result in additional subscription, setup, or other fees to be paid by Client to SMARTCLINIX.

- B. Acceptance of the Terms of Service. In the event these Terms & Conditions have not otherwise been specifically executed as part of the License and Service Agreement, the following shall constitute the “acceptance” of these terms and conditions:
1. By the signature of an authorized representative of Client to the License and Service Agreement setting forth the general terms and conditions under which the license to which these terms and conditions apply; OR
  2. Acceptance of this Agreement by clicking “I Accept” when this Agreement appears in the Software; OR
  3. Use, and/or continued use of the Software by any person using credentials assigned to Licensee.

III. **License Term, Modification & Termination.** The term of Client’s license for the Software shall commence on the effective date provided in the License and Service Agreement and continue until termination of contract. At the end of the first agreed term, contract shall continue to renew automatically for each additional term, unless either 60 days’ written notice is given by the either party for its intent not to renew the contract. Prior to auto-renewal of the contract SMARTCLINIX may also propose updated service model or charges for the renewed term , and in that event, client has a right either to accept the updated negotiated model/pricing or to request not to renew the contract.

Client may also terminate the contract without any cause by giving 90 days written notice, however if that notice is given during the first term, an early termination fee shall apply as outlined below. If Licensee breaches any term of this agreement, SMARTCLINIX may terminate this contract in its sole discretion, and licensee shall be liable for any outstanding dues as well as any remaining balance for the term of the contract.

- A. Modifications: SMARTCLINIX may modify these terms of service at any time, at its sole and exclusive discretion. You will be provided at least thirty (30) days’ notice prior to the new Terms of Service taking effect. This notice may be provided via any reasonably commercial means, including a notification within the software.

Upon receipt of such a notice or notification of the change in the Terms of Service, You may terminate this agreement by providing written notice to SMARTCLINIX before the effective date of the change. You agree that your failure to give notice of termination prior to the effective date of the change, or acceptance of the change to these Terms of Service within or outside of the software, or by having receipt of notice of the change and failing to object to the same within ten (10) business days shall constitute acceptance of the change. Upon acceptance, the Terms of Service, as amended, shall become part of the Agreement between the parties.

- B. Termination, Suspension or Amendment as a Result of Government Regulation: Notwithstanding anything to the contrary in this Agreement, SMARTCLINIX has the right, on proper notice to you, to immediately terminate, suspend, or amend this Agreement, without liability to you in order to:
1. Comply with any order issued or proposed to be issued by any governmental agency;
  2. Comply with any provision of law, any standard of participation in any reimbursement program, or any accreditation standard; or
  3. If the performance of any term of this Agreement by either Party would cause it to be in violation of law, or would otherwise jeopardize the relationship between SMARTCLINIX and its key providers.
- C. Judicial or Administrative Procedures: We may terminate this Agreement immediately upon notice to You if:
1. You, or any member of your organization is named as a defendant in a criminal proceedings for a violation of federal or state law;
  2. A finding or stipulation that you have violated any standard or requirement of federal or state law relating to the privacy and/or security of health information is made in any administrative or civil proceeding; or
  3. You are excluded from participation in a federal or state healthcare program.
- D. Insolvency or Bankruptcy: We may terminate this agreement immediately in the event that Client discontinues business, or becomes insolvent, or if any action relating to the bankruptcy or insolvency of the Licensee is instituted. In such an event, UHDC shall be nominated as the ‘first creditor’ with regards to the allocation of the Licensee’s assets and any recovery thereof.
- E. Suspension of Access: We may suspend access to the Programs or the Services by you or any member of Client’s workforce immediately pending your cure of any breach to this Agreement, or in the event we

determine, in SMARTCLINIX's sole discretion, that access to or use of the Software or Services by you or a member of Client's workforce may jeopardize the Software or Services, or the confidentiality, privacy, security, integrity or availability of information within the Software or Services, or that you or a member of Client's workforce has violated or may violate this Agreement or any stated Policies and Procedures, or has jeopardized or may jeopardize the rights of any third party, or that any person is or may be making unauthorised use of the Software or Services with any User ID assigned to you or a member of Client's workforce. We may terminate access of any member of your workforce upon termination or change in status of his or her employment with you. Our election to suspend access to the Software, or other Services we provide shall not have the effect of waiving any other rights we may have under this agreement, including termination.

1. Return of your Practice Data: If you decide to leave SMARTCLINIX service, upon your request and at your expense, SMARTCLINIX will make the copy of its database available to you. Unless you demand your practices data including patient records within 3 months of termination or expiration of this Agreement by paying the then applicable data transfer fees to SMARTCLINIX, SMARTCLINIX will not be liable to maintain such data on its own and shall destroy the data in accordance with the provisions of HIPAA. The sole liability and responsibility as to your practice data including patient records rests with you .
2. Data Access: If there are disputes between SMARTCLINIX and you, which have not been resolved through normal notice and SMARTCLINIX resolution steps, including payment default, we reserve the right to immediately suspend or terminate you access until the default is cured.

DURING THE TERM OF THIS AGREEMENT AS WELL AS AFTER THE EXPIRATION OR TERMINATION HEREOF AND REGARDLESS THE CAUSE OF TERMINATION, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD SMARTCLINIX HARMLESS FROM AND AGAINST ANY CLAIMS, DAMAGES, COSTS, LOSSES AND EXPENSES THAT YOU OR ANY THIRD PARTY MAY INCUR AS A RESULT OF (i) YOUR INABILITY TO CLAIM THE DATA WITHIN 3 MONTHS OF TERMINATION OR EXPIRATION OF THIS AGREEMENT REGARDLESS OF THE CAUSE OF TERMINATION; OR (ii) SUSPENSION, TERMINATION OR CHANGE OF YOUR ACCESS TO PROGRAMS AND SERVICES.

For purposes of software modifications, improvements and debugging, SMARTCLINIX its Licensors or agents have the right to enter your database at any time. This access to your information will be strictly for purposes mentioned herein, and in full compliance with HIPPA regulations.

3. Additional Data Storage Space: The basic SMARTCLINIX subscription comes with 5 gigabytes of free space. In case additional data Storage space is required by you, SMARTCLINIX reserves the right to implement guidelines concerning Data Storage Space and Service, and update those guidelines as needed. Your continued use of the Data Storage Space constitutes your acceptance of the then current guidelines.
- F. Return of SMARTCLINIX Property. Upon the effective date of termination of this Agreement, for any reason, the Licensee shall promptly:
1. Return and deliver to SMARTCLINIX all of the SMARTCLINIX Materials, documents, and manuals;
  2. Discontinue use of SMARTCLINIX software or services, destroying copies of all software programs, materials, documents, and manuals stored on the Licensee's System;
  3. Immediately render all sums and payments for all billed and unbilled invoices due and owing to SMARTCLINIX the fees for the balance of the Term upon termination;
  4. In the event of termination for any default or breach by the Licensee, pay to SMARTCLINIX all expenses incurred by SMARTCLINIX in the form of damages, additional costs and legal expenses, including reasonable attorney and expert fees;
  5. Remove any and all software provided under this Agreement from your computer systems, cease to have access to the Software or services, and return to SMARTCLINIX all hardware, software and documentation provided by or on behalf of us.

**IV. License Fees.**

- A. License fee as outlined in the payment section of this contract
- B. Any applicable price revisions will be notified through the advance invoices. In case Licensee does not agree to such revisions, Licensee may return the invoice marked “not acceptable” to initialize the early termination as per the termination procedure given herein.
- C. The fee for subscribing to the Services (“Subscription Fee”) is set forth within the License and Services Agreement between the Parties. The Subscription or License Fees shall be determined on the basis of the number of Registered Providers authorized to use the Product, each of whom shall be registered (each, a “Registered User.”) The Products may contain embedded controls limiting user log-on to the number of Registered Providers and such counters may interfere with use of the Products beyond the number of Registered Providers licensed. Office managers, secretaries and Nurses (not Nurse Practitioners) practicing directly in conjunction with a licensed provider may not require a separate license unless specified in the payment section. The amounts payable shall be due and payable on the date specified in this Agreement or if not specified then within thirty (30) days of receipt of invoice therefore and payment must be made in U.S. Dollars. SMARTCLINIX will assess Licensee a late payment charge on any amount which remains unpaid thirty (30) days after it is due, computed at the rate of one and one-half percent (1½%) per month or the highest allowable by law, whichever is higher, on the unpaid amount for every month the amount remains unpaid. All payments will be made without setoff, counterclaim, recourse or other defense. Nothing mentioned herein will limit any additional rights and remedies available to SMARTCLINIX at law, in equity and / or otherwise arising due to the default of payment by the Licensee. Additional third party programs, network access, connectivity solutions, subscription services, tools, knowledge bases, databases and libraries, etc. whether provided separately or within SMARTCLINIX Program will be subject to additional charges, and their use shall be subject to the acceptance of their individual terms and conditions by the Licensee which will be communicated to Licensee from time to time. A reconnection fee equal to one (1) month’s Subscription Fee shall be charged to re-establish connection after termination due to non-payment.
- D. If Licensee adds one or more Registered Users to its practice, the software counters shall be adjusted to permit such Registered Users to use the Software, upon payment of additional License Fees at the rate specified herein, or the then-current rate, including any Support and Maintenance fees calculated at the then-current rate for additional providers, and pro-rated for the applicable portion of the year in which the provider(s) is added. If Licensee loses one or more Registered Users prior to term of the contract, there shall be no change in the License Fees unless approved by SmartClinix.

Licensee acknowledges and agrees that there shall be no refunds under this Agreement for any reason, any service delivered or scheduled to be delivered, whatsoever, including termination of this Agreement regardless of the cause of such termination. In case Licensee requests early termination for any reason whatsoever, Licensee shall be liable for all past due payments along with early termination fee equal to minimum of 3 months of subscription charges as per the existing contract term. This will likely cover all internal and third party costs the SMARTCLINIX incurred for the creation and functioning of Licensor’s account for the agreed upon term hereof, and other out of the pocket expenses related thereto.

- E. Licensee also agrees to pay, at our then current rates, for all products, features or services that Licensee requests from SMARTCLINIX which are not included in our standard product and services (“Miscellaneous Charges”). SMARTCLINIX will notify Licensee of the applicable Miscellaneous Charges before performing services or providing features and or products to which a Miscellaneous Charge will apply. The Miscellaneous Charges may change from time to time. Current fees and charges may be obtained by calling SmartClinix help line.

**V. Bug fixes and Updates.**

- A. As long as the subscription for the Software is in effect, subject to the timely payment of SMARTCLINIX fees and dues, the Licensee will be entitled to receive bug fixes available to other SMARTCLINIX customers for that software version. SMARTCLINIX may issue Updates/upgrades from time to time and will specify, in its sole discretion any costs that may be associated with the updates so issued. Updates, if issued, may apply to selected Software, modules, features, or platforms, as may be specified by SMARTCLINIX from time to time.

**VI. Support Services.**

- A. SMARTCLINIX shall provide Licensees with telephone support for the Software during business hours, which are 8 a.m. to 5:00 p.m. Eastern Standard Time, Monday through Friday, excluding holidays (the “Business Hours”) subject to: (i) timely payment of SMARTCLINIX invoices and support fees, and (ii) Licensee’s compliance with its obligations under this Agreement. Extended hours support may be available at the request of the Licensee and based on the contract may incur additional cost to licensee. Licensee agrees that all timings

and costs, specified herein, may be changed at the discretion of SMARTCLINIX and shall be notified using acceptable means of communication.

**VII. System Monitoring, Compliance, Taxes and Other Guidelines.** SMARTCLINIX reserves the right to monitor the System electronically from time to time and to access and disclose any information as permitted or required by applicable laws or regulation, to operate its System properly, or to protect itself or others. It is not SMARTCLINIX's intention that the Services, System or SMARTCLINIX's facilities be used in contravention of the Communications Decency Act of 1996, 47 U.S.C. Section 223, or any other applicable law.

- A. It is Licensee's responsibility to ensure that its usage of SMARTCLINIX at all times remains compliant with all applicable Federal, and State laws, rules and regulations. Licensee shall indemnify and defend SMARTCLINIX for any claims, suits, losses or actions against SMARTCLINIX arising from, related to or in connection with any violation by Licensee of the Communications Decency Act, and other applicable State, Federal law, rules and regulations.
- B. Licensee agrees to use or disclose any Individually Identifiable Health Information (IIHI) obtained or sent through the licensed programs and services including without limitation Surescripts System and or other third party programs, components and services only in a manner consistent with all Applicable Law, including HIPAA and including obtaining any consents or authorizations required to be obtained by such Applicable Law, and that all consents and authorizations will allow disclosure of all data elements transmitted through the Surescripts System whether or not Licensee intends to utilize such data elements.
- C. Licensee will under no circumstances use or allow any use of any data accessed by Licensee through the Surescripts System other than for the specific purposes identified below:
  1. Patient visit services may be accessed by the Licensee only in connection with the treatment of a specific patient in a scheduled or walk-in outpatient visit or another specific treatment event. Licensee shall not access or attempt to access these services in connection with any inpatient or other acute service or in connection with any institutional service.
  2. Medication history transaction allows Licensee to request medication history for a specific patient utilizing the National Council for Prescription Drug Programs ("NCPDP") transaction segment syntax then implemented by Surescripts.
- D. Licensee will allow SMARTCLINIX and/or its licensors including without limitation Surescripts to access, inspect and audit records of the Licensee relating to the use of the licensed programs and services including Surescripts System, Surescripts Data and data or information provided by Participants (Participants means the data sources, pharmacy benefit manager, health benefit payor or administrator, prescribers health care providers or facilities, pharmacies, information system vendors, or other entities, each of which has entered into a written agreement with Surescripts, or has the right through another entity's written agreement with Surescripts, to access, provide or communicate information through the Surescripts System.)
- E. In the event that SMARTCLINIX grants Licensee permission to modify any of the SMARTCLINIX Programs, then Licensee assumes all liability for such modified programs. Licensee hereby acknowledges and agrees that SMARTCLINIX disclaims all warranties, express or implied, regarding any Licensee-modified programs.
- F. All changes and fees shall be exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and you agree to pay any tax (excluding taxes on our net income) that we may be required to collect or pay now or at any time in the future and that are imposed upon the sale or delivery of items and services purchased under this Agreement.
- G. In case of Licensee signing up for any additional feature, product or service with SMARTCLINIX, the terms and conditions of this Agreement shall prevail and be applicable, and an additional addendum for the pricing of that additional feature, product or service shall be signed.
- H. Licensee is solely responsible for any charges that Licensee incurs to use the Products and Services, such as telephone and equipment charges, and fees charged by third party vendors of products and services.

**VIII. Indemnity to Licensee for IP Violations.**

- A. SMARTCLINIX, subject to the limitations on its liability set forth elsewhere herein, shall hold harmless and defend Licensee against suits based solely on a claim that the use of licensed program by Licensee in accordance with the terms hereof, infringes on any U.S. patent, copyright or trademark, and the use of such program in such manner is prohibited by a court of competent jurisdiction, provided that Licensee gives SMARTCLINIX prompt written notice of such suit and gives SMARTCLINIX full authority, information and assistance to defend such suit, and permits SMARTCLINIX to control the defense thereof.

- B. However, this indemnity will not apply unless Licensee gives SMARTCLINIX prompt notice of such claim or action alleging such infringement and has given SMARTCLINIX full opportunity and sole authority to control the response thereto and the defense thereof, including, without limitation, any agreement relating to settlement. SMARTCLINIX shall have no obligation to the extent a claim is based upon:
1. use of any version of program which is altered by, or at the request of Licensee, if infringement would have been avoided by a current, unaltered version; or
  2. combination, operation or use of the program with software and/or hardware not delivered by SMARTCLINIX if such infringement could have been avoided by not combining, operating or using of the program with such software and/or hardware.
- C. Remedial Measures: If the licensed program becomes the subject of a claim, or if SMARTCLINIX reasonably believes that use of licensed program may become the subject of a claim, then SMARTCLINIX may do, at its own expense and option, at least one of the following:
1. procure for Licensee the right to continue use of licensed program at no additional cost to Licensee for such right;
  2. replace the licensed program with a non- infringing product;
  3. modify the licensed program so that it becomes non- infringing;
  4. terminate Licensee's license to such program upon written notice to Licensee, whereupon Licensee shall immediately terminate all further use of the affected licensed program.
  5. In the event of termination, SMARTCLINIX shall have no liability to Licensee or any other third party concerning their use of such SMARTCLINIX program except to refund to Licensee a pro rata portion of the License Fees, actually paid to SMARTCLINIX, and applicable to the remaining term of the Agreement.
- D. No other Remedies Regarding Infringement: THE FOREGOING STATES SMARTCLINIX'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY INFRINGEMENT, ALLEGED INFRINGEMENT OR MISAPPROPRIATE OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY BY THE LICENSED PROGRAM OR ANY PART THEREOF.

**IX. Your Responsibility for Misuse by Other Users.** You acknowledge that in granting access to the SMARTCLINIX Software, we will rely on the assurance of each individual authorized to access the Software for, (i) their identity and credentials, (ii) the purposes of which they are accessing the SMARTCLINIX Programs and Services, and (iii) the nature and extent of the information to which they will have access.

- A. You acknowledge that, while the SMARTCLINIX Software will contain technical safeguards against misuse of the SMARTCLINIX Software, it will rely to a substantial extent on the representations and undertakings You and your Workforce to ensure secure access to the software for its intended use. You agree that we will not be responsible for any unlawful access to or use of any sensitive or otherwise private health information stored within any of the SMARTCLINIX Software, resulting from the User's misrepresentation to us, breach of these Terms & Conditions, or a breach of any other policy and procedural guidelines provided by SMARTCLINIX to Client and authorized users of Client.

**X. HIPPA; Business Associate Provisions and De- identified Information.**

- A. To the extent required by the Health Insurance Portability and Accountability Act of 1996 and regulations related to privacy promulgated there under (the "Privacy Standard"), and notwithstanding anything to the contrary herein, SMARTCLINIX will maintain the confidentiality of Protected Health Information or PHI as defined by the Privacy Standard, SMARTCLINIX will: not use or further disclose PHI other than as permitted or required by this Agreement or as required by law (as such term is defined by the Privacy Standard); use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement; report to Licensee any use or disclosure of PHI not provided for by this Agreement of which SMARTCLINIX become aware; ensure that any agent, including a subcontractor to whom SMARTCLINIX provides PHI received from, or created or received by Licensee on behalf of, Licensee agrees in writing to the provisions of this Agreement; mitigate, to the extent practicable, the harmful effect of any use or disclosure of PHI not permitted by this

Agreement; upon expiration or termination of this Agreement, return to Licensee or destroy all PHI received from, or created or received on behalf of Licensee (including all copies thereof) then in SMARTCLINIX possession or under its control; or if, return or destruction is not feasible, provide Licensee with written notice in which SMARTCLINIX describes why return or destruction is not feasible and agree in writing to extend the protections of this Section to the PHI and limit further uses and disclosures to those purposes that make return or destruction infeasible. SMARTCLINIX agrees that this Agreement may be amended from time to time if necessary to comply with HIPAA. The requirements of this Section will survive this Agreement.

- B. Business Associate Provisions: In maintaining, using and affording access to Your Health Information in accordance with this Agreement, we will:
1. Not use or further disclose the information except as permitted or required by this Agreement or as required by law;
  2. Use appropriate safeguards to prevent use or disclosure of the information other than as provided by this Agreement, including administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the information;
  3. Report to you any use or disclosure of the information not provided for by this Agreement of which we become aware, or any security incident as a result of which we determine that unauthorized access has been obtained to Your Health Information;
  4. Ensure that any of our agents or subcontractors to whom we provide Your Health Information for purposes of assisting us in providing the Programs or the Services, agrees to the same restrictions and conditions that apply to us with respect to such information, including the obligation to implement reasonable and appropriate safeguards to protect it (it being understood that other Users of the System are not our agents or subcontractors);
  5. Make available protected health information in accordance with SECTION 164.524 of the Privacy Rule;
  6. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with SECTION 164.526 of the Privacy Rule;
  7. Make our internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by us on your behalf available to the Secretary of the United States Department of Health and Human Services for purposes of determining your compliance with the Privacy Rule; and
  8. At termination of this Agreement, if feasible, return or destroy all protected health information received from, or created or received by us on your behalf that we still maintain in any form, and retain no copies of such information; or, if such return or destruction is not feasible, 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. You acknowledge that it will likely be infeasible to segregate Your Health Information for removal from the System. However, we will provide you with an electronic copy of Your Health Information in the format in which it is produced by our standard procedures for copying or archiving such information. You acknowledge that you may have to purchase proprietary software in order to access such information.
- C. De- Identified Information: You hereby transfer and assign to us all rights, title and interest in and to all De-Identified Information generated from your use of the Software free of any fee or charge whatsoever. You agree that we may use, disclose, market, license and sell such De-Identified Information for any purpose without restriction, and that you have no interest in such information, or in the proceeds of any sale, license, or other commercialization thereof. You acknowledge that the rights conferred by this section are the principal consideration for the provision of the Services, without which we would not enter into this Agreement.
- D. Consent to BAA: In your acceptance of these Terms of Service, and the Agreement as a whole, you are also agreeing to the terms and conditions found within our Business Associate Agreement located at [www.smartclinix.net/BAA](http://www.smartclinix.net/BAA).

XI. **Hosting/ Service Level Agreement.**

- A. SMARTCLINIX shall host the Software on hardware under the control of SMARTCLINIX.

- B. Licensee understand and agree that it is responsible for the following:
1. Procuring, at its expense, the necessary environment at the Licensee's location(s) to use the Hosted Applications via the Internet or otherwise, including, without limitation, all computer hardware, software and equipment, Internet access and telecommunications services (collectively, the "Licensee Systems");
  2. Complying with all laws, rules and regulations related to the Licensee's use of its Systems and the licensed Programs and services hereunder;
  3. Keeping its username and password secret and confidential, and, for any communications or transactions that are made, using the same;
  4. Changing its username password if it believes that the same has been stolen or might otherwise be misused;
  5. Maintain recommended information security tools, technologies, firewalls, antivirus, spywares, etc. and other technical and administrative precautions to preserve and protect the protected health information (PHI);
  6. Obligations under any third party agreements to which Licensee is a party, including, without limitation, any agreement pursuant to which Licensee procures the Licensee Systems or any portion thereof, regardless of whether SMARTCLINIX provides Licensee with any assistance in such procurement.
- C. Permitted Uses: Subject to the terms of this Agreement, we authorize you to access and to use the Software and Services for only those purposes for which they were designed:
1. You may access only information pertaining to individuals with whom you have a treatment relationship or for whom a provider who has a treatment relationship with has requested a professional consultation from you, or from whom you have received authorization to use their health information; and
  2. You may use only the minimum necessary information for payment purposes. You agree that you will not access or use the Software and Services for any other purposes. In particular:
    - a) You will not reproduce, publish, or distribute content in connection with the programs and services that infringes any third party's trademark, copyright, patent, trade secret, publicity, privacy, or other personal or proprietary right;
    - b) You will comply with all applicable laws, including laws relating to maintenance of privacy, security, and confidentiality of patient and other health information and the prohibition on the use of telecommunications facilities and other mediums to transmit illegal, obscene, threatening, libelous, harassing, or offensive messages, or otherwise unlawful material;
    - c) You will not: abuse or misuse the Programs or the Services, including gaining, facilitating or attempting to gain unauthorized access to the programs or services; altering or destroying information in the programs except in accordance with accepted practice; use the Programs or Services in such a manner that interferes with other Users' use of the System; or use the Programs or the Services in any manner that violates this Agreement, our guidelines or those of concerned third parties and or our Licensors and or our Policies and Procedures. You are solely responsible for requesting and obtaining the relevant guidelines on your own.
  3. You acknowledge and agree that the Software and services, materials, and subscriptions/access provided hereunder or any other agreement or addendum thereof by SMARTCLINIX or its licensors are not intended to be used as diagnostic tools or to provide medical diagnoses or determinations and the Licensee and its authorized users accept all the risk and are solely responsible for using due care and exercising their independent professional judgement with regard to patient examination, diagnosis, and treatment.
  4. You will be responsible for ensuring that your authorized users follow proper procedures required by law and by good professional medical and data handling practice with regard to the form of patient

records, the creation and storage of backup copies of computerized patient records, consents to treat or disclose, and use of release of data. You acknowledge that in the event that license fees are not paid within thirty (30) days of when due, without limitation of SMARTCLINIX rights to take actions, the licensed programs may automatically convert to read only mode until the delinquent license fees together with SMARTCLINIX's standard late payment fees and reconnect charges are paid to SMARTCLINIX. SMARTCLINIX further reserves the right to disable the Licensee's read-only access to the SMARTCLINIX products, materials and services in case of continued default of payment within a period of 15 days thereafter.

5. You acknowledge and agree that You are solely responsible for ensuring that each authorized user is aware of the material terms of this agreement, and that no person who is not an authorized user be allowed access to the SMARTCLINIX programs, related documents, and training materials etc. Authorized SMARTCLINIX resellers are not authorized to execute any agreement on behalf of SMARTCLINIX or otherwise bind or commit SMARTCLINIX in any respect. Any agreement so executed on behalf of SMARTCLINIX will be null and void.

## **XII. Safeguards.**

- A. You will be solely responsible to implement and maintain appropriate administrative, physical and technical safeguards to protect information within the Programs from unauthorized access, use or alteration or using a User ID assigned to you or a member of your Workforce. Such safeguards shall comply with federal, state, and local requirements, including the Privacy Rule and the Security Rule, whether or not you are otherwise subject to HIPAA. You will maintain appropriate security with regard to all personnel, systems, and administrative processes used by you or members of your Workforce to transmit, store and process electronic health information through the use of the Programs and Services.

1. **Compliance:** You will immediately notify us of any breach or suspected breach of the security of the Programs and Services of which you become aware, or any unauthorized use or disclosure of information within or obtained from the Programs and Services, and you will take such action to mitigate the breach or suspected breach as we may direct, and will cooperate with us in investigating and mitigating the breach. You will comply with the terms of this Agreement, our Policies and Procedures, guidelines, including third party policies and procedures as applicable to you, and all applicable laws, rules and regulations. You will be solely responsible for the use of the Programs and Services by you and your Workforce, and shall indemnify us and hold us harmless from any claim, cost or liability arising from such use, including reasonable attorneys' fees.
2. **User Identification:** We authorize you and your Authorized Workforce to use the User IDs assigned to you by us. You acquire no ownership rights in any User ID, and User IDs may be revoked or changed at any time in our sole discretion. You will adopt and maintain reasonable and appropriate security precautions for User IDs to prevent their disclosure to or use by unauthorized persons. Each member of your Authorized Workforce shall have and use a unique identifier. You will use your best efforts to ensure that no member of your Workforce uses a User ID assigned to another person.
3. **No Third party Access:** Except as required by law, you will not permit any third party (other than your Authorized Workforce) to have access to the Programs and Services without our prior written agreement. You will promptly notify us of any order or demand for compulsory disclosure of health information if the disclosure requires access to or use of the Programs and Services. You will cooperate fully with us in connection with any such demand.
4. **Your Workforce:** You may permit your authorized Workforce to use the Programs and Services on your behalf, subject to the terms of this Agreement. You will obtain a unique User ID from us for each member of your Authorized Workforce; train all members of your Authorized Workforce in the requirements of this Agreement and the guidelines and Policies and Procedures relating to their access to and use of the Programs and Services, and ensure that they comply with such requirements; take appropriate disciplinary action against any member of your workforce who violates the terms of this Agreement or the guidelines, Policies and Procedures; ensure that only you and you Authorized Workforce access the Programs and Services from Your Site; immediately notify us of the termination of employment of any person to access the Programs and Services.
5. **Compliance with Law:** You are solely responsible for ensuring that your use of the Programs and Services (including making health information available through the Programs and Services) complies with applicable law. You will not undertake or permit any unlawful use of the Programs and Services, or take any action that would render the operation or use of the Programs and Services by us or any other User unlawful. We offer no assurance that your use of the Programs and Services under the terms of this Agreement will not violate any law or regulation applicable to you.

6. Professional Responsibility: You will be solely responsible for the professional, advisory, analytical and technical services you provide. We make no representations concerning the completeness, accuracy, availability or utility of any information in the Programs and Services, or concerning the qualifications or competence of individuals who placed it there. We have no liability for the consequences to you or your patients of your use of the Programs or Services.
7. Cooperation: You will cooperate with us in the administration of the Programs and Services, including providing reasonable assistance in evaluating the Programs and Services collecting and reporting data requested by us for purposes of administering the Programs and Services.

### XIII. **Rights to Data**

- A. Licensee represents and warrants to SMARTCLINIX that it has the unencumbered right to possess and use all information and data entered into the Software by Licensee (or its agents), and that no third party has any rights in such information and data. Licensee agrees to indemnify and hold harmless SMARTCLINIX for any and all claims, losses, damages, and costs (including but not limited to time and materials costs and reasonable attorney's fees) arising from or relating to untruthfulness (whether intentional or otherwise) of the preceding representation.
- B. Licensee retains all ownership and rights to all data that they enter into the Software. SMARTCLINIX will not use Licensee's data for any purpose other than for operation of the Software on behalf of the Licensee, and to access such data for purposes of auditing and reporting on account usage, and to maintain and troubleshoot the software.
- C. Licensee may request an export of their data at any time and such export will be provided once all undisputed monies due to SMARTCLINIX are paid in full. Exported data shall be provided in standard XML format. If the Licensee desires data in a format other than the standard XML file output provided for in the Software, if there may be a charge associated with exporting the data from the Software. Upon request, Licensee will be given a timely and fair market value quote, on a time and materials basis at SMARTCLINIX's then prevailing hourly rates, to perform the programming tasks associated with extracting the desired data from the Software and delivering it to the Licensee.
- D. Licensee acknowledges that any data entered into the software and on the hardware hosting the software is entered at its own risk, subject to the terms herein. In the event of any loss or damage to Licensee's data, licensee's sole remedy shall be for SMARTCLINIX to use commercially reasonable efforts to replace or restore the lost or damaged data from the latest backup of such data SMARTCLINIX has maintained in accordance with its standard archival procedures.
- E. All data entered into the Software is subject to SMARTCLINIX's privacy policy found at <https://www.SMARTCLINIX.com/privacy>. Licensee further agrees and acknowledges the, provided SMARTCLINIX does not violate its privacy policy with respect to data entered into the software, Licensee accepts full and complete responsibility for compliance with all local laws, rules, and other requirements relating to privacy, in connection with, in any manner whatsoever, any data entered in the software.
- F. SMARTCLINIX shall have no obligation to maintain Licensee's data after the date 30 days following termination of this Agreement.

XIV. **Title to Software.** The Software is protected by applicable United States and/or foreign laws and treaties, including copyright laws and treaty provisions. Except for third party products, SMARTCLINIX owns all right, title and interest in the Software including trade secrets, patents, copyrights, and database rights, and the Software. Except as specifically granted under this Agreement, Licensee has no, and is not granted any right, title, or interest in the Software. Licensee hereby agrees that all right, title, and interest in any derivative works created in violation of this Agreement shall be owned by SMARTCLINIX and hereby assigns such all right title and interest in any such derivative works to SMARTCLINIX.

#### A. **No Modifications/ Enhancements Made by Licensee**

1. Licensee shall not, will make no effort to, and will not knowingly or negligently permit any third party to:
  - a) Reverse engineer, or make any modifications or enhancements to Software
  - b) Decompile; disassemble, analyze or otherwise examine the Software for the purpose of:
  - c) Reverse engineering
  - d) Making any modifications or enhancements to the Software, or
  - e) Creating, enhancing, or supporting a competitive Software application.

2. Delete or alter in any manner any notices, disclaimers, or other legends contained in the Software or appearing on any screens, documents, reports, or other materials obtained through use of the Software.
3. Create a derivative work based on or incorporating the Software or any other Proprietary information.

XV. **Disclaimers**

- A. THE SOFTWARE IS PROVIDED "AS IS." PROVIDER DISCLAIMS ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO, ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ACCURACY. LICENSEE DOES NOT WARRANT THE SOFTWARE TO BE FREE OF BUGS, ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS OR PROGRAM LIMITATIONS AND LICENSEE HEREBY WAIVES ANY CLAIMS BASED ON THE SAME.
- B. LICENSEE WILL INDEMNIFY AND HOLD HARMLESS PROVIDER FROM ANY AND ALL COSTS, CLAIMS, ACTIONS, FEES AND/OR JUDGEMENTS ARISING FROM OR RELATING TO, IN ANY MANNER WHATSOEVER, THIS AGREEMENT OR LICENSEE'S USE OF THE SOFTWARE, INCLUDING (BUT NOT LIMITED TO) FAILURE TO COMPLY WITH PRIVACY LAWS OR TO COLLECT AND PAY APPLICABLE TAXES.
- C. THE LICENSEE ACKNOWLEDGES THAT SMARTCLINIX HAS NO CONTROL OF OR RESPONSIBILITY FOR THE LICENSEE'S USE OF THE SOFTWARE OR CONTENT PROVIDED THEREON; HAS NO LIABILITY TO ANY PERSON FOR ANY DATA OR INFORMATION INPUT INTO THE SOFTWARE BY THE LICENSEE OR A MEMBER OF LICENSEE'S WORKFORCE.
- D. UNAUTHORIZED ACCESS: LOST OR CORRUPT DATA; WE ARE NOT RESPONSIBLE FOR UNAUTHORIZED ACCESS TO YOUR DATA, FACILITIES, OR EQUIPMENT BY INDIVIDUALS OR ENTITIES USING THE SOFTWARE AND OR SERVICES, OR FOR ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, THEFT, CORRUPTION, LOSS OR DESTRUCTION OF YOUR DATA FILES, WHETHER BY ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER MEANS. YOU ARE SOLELY RESPONSIBLE FOR PROTECTING YOUR DATA FROM LOSS BY IMPLEMENTING APPROPRIATE SECURITY MEASURES, INCLUDING ROUTINE BACKUP PROCEDURES.
- E. YOU HEREBY WAIVE ANY DAMAGES OCCASIONED BY LOST OR CORRUPT DATA, INCORRECT REPORTS, OR INCORRECT DATA FILES RESULTING FROM ANY PROGRAMMING ERROR, OPERATOR ERROR, EQUIPMENT OR SOFTWARE MALFUNCTION, SECURITY VIOLATION, OR THE USE OF A THIRD PARTY SOFTWARE APPLICATION NOT SPECIFICALLY AUTHORIZED BY SMARTCLINIX.

- XVI. **Remedy Limitations.** SMARTCLINIX's entire liability and Licensee's sole and exclusive remedy for system unavailability, bugs, or other problems with the operation of the Software shall be SMARTCLINIX's option to either:
- A. Return to Licensee the license fee for the period during which Software did not perform, or
  - B. Repair any defects or replace the Software.

- XVII. **Damage Limitations.** LICENSEE WILL INDEMNIFY AND HOLD HARMLESS PROVIDER FROM ANY AND ALL COSTS, CLAIMS, ACTIONS, FEES AND/OR JUDGEMENTS ARISING FROM OR RELATING TO, IN ANY MANNER WHATSOEVER, THIS AGREEMENT OR LICENSEE'S USE OF THE SOFTWARE, INCLUDING (BUT NOT LIMITED TO) FAILURE TO COMPLY WITH PRIVACY LAWS OR TO COLLECT AND PAY APPLICABLE TAXES.

- XVIII. **Proprietary Information.** Licensee acknowledge that the Software, including but not limited to all screens, reports, data, arrangements, "look and feel", and other components, constitute proprietary and copyrighted information and subject matter of SMARTCLINIX ("Proprietary Information"). Licensee agrees to not, directly or indirectly, without SMARTCLINIX's prior written consent, use the Proprietary Information for any purpose other than as expressly permitted under this agreement, and shall not divulge, provide, transmit, copy, make available or otherwise communicate the Proprietary Information to any third party or permit any third party to use such Proprietary Information. Proprietary Information shall not include information that:
- A. Is in or enters the public domain without breach of this Agreement,
  - B. Was possessed by Licensee prior to first receiving it from provider,
  - C. Was developed by Licensee independently and without use of or reference to the Proprietary information or

- D. Was received by Licensee from a third party without restriction on disclosure and without breach of a non-disclosure obligation. Notwithstanding the foregoing,
  - E. Licensee shall be permitted to disclose Proprietary Information if such disclosure is required by law, provided that Licensee
  - F. Provides SMARTCLINIX with prompt notice of any potential disclosure requirements so as to permit SMARTCLINIX to seek a protective order or other appropriate remedy, and
  - G. Cooperate with SMARTCLINIX's attempts to prevent disclosure or to otherwise protect the Proprietary Information.
- XIX. Non- Solicitation.** Licensee agrees that it shall not, and it shall procure that its employees and agents shall not, directly or indirectly, approach, solicit, entice, or attempt to approach solicit, or entice an employee of SMARTCLINIX to leave employment of, or otherwise sever its relationship with, SMARTCLINIX. SMARTCLINIX agrees that it shall not, and it shall procure that its employees and agents shall not, directly or indirectly, approach, solicit, entice, or attempt to approach solicit, or entice an employee of Licensee to leave the employment of, or otherwise sever its relationship with, Licensee.
- XX. Arbitration & Conflict Resolution.** Any dispute, controversy or claim arising out of or related in any manner to this Agreement which cannot be amicably resolved by the Parties shall be solely and finally settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place before a panel of one arbitrator sitting in St. Johns County, Florida. The language of the arbitration shall be English. The arbitrators will be bound to adjudicate all disputes in accordance with the laws of the State of Florida. The decision of the arbitrators shall be in writing with written findings of fact and shall be final and binding on the Parties. The arbitrator shall be empowered to award money damages, but shall not be empowered to award consequential damages, indirect damages, incidental damages, special damages, exemplary, punitive damages or specific performance. Each Party shall bear its own costs relating to the arbitration proceedings irrespective of its outcome. This section provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement, except that a Party may seek a preliminary injunction or other injunctive relief in any court of competent jurisdiction if in its reasonable judgment such action is necessary to avoid irreparable harm.
- XXI. Assignment.** The rights conferred by this License shall not be assignable by the Licensee without SMARTCLINIX's prior written consent. SMARTCLINIX may impose a reasonable fee on any such assignment.
- XXII. General Provisions**
- A. Complete Agreement. This License Agreement together with any schedules referred to in this Agreement, all of which are incorporated herein by reference, constitutes the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements, representations, and documentation relation to the subject matter of this Agreement.
  - B. Modifications/Updates to Agreement. As explained earlier herein, SMARTCLINIX reserves the right to update these Terms and Conditions at any time, subject to the relevant notice requirements. The latest copy of the Agreement shall be available within the software, or may be requested at any time for delivery by Fax or Email.
  - C. Applicable Law; Jurisdiction. This License will be governed by the State of Florida. Licensee agrees and understands that all disputes whether in contract, tort or otherwise, arising from or relating to any transaction or dealings between SMARTCLINIX and Licensee shall be adjudicated in the state and/or federal courts covering St. Augustine, Florida, and Licensee consents to the jurisdiction of said state and federal courts for these purposes.
  - D. Notices. All notices and other communications provided by any party in connection with this Agreement shall be in writing and shall be deemed received by the intended recipient as follows:
    - 1. When delivered personally to the recipient's address;
    - 2. Three days after being deposited in the United States mail, postage prepaid to the recipient's address;
    - 3. When sent by fax or telex to the last fax or telex number of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first- class or certified mail or the recipient delivers a written confirmation of receipt.
    - 4. When displayed in the course of Licensee accessing the Software and acknowledged by Licensee via a computer mouse click.

- E. Maintaining Active Address. In the event Licensee changes its address, it shall be required to notify SMARTCLINIX within a commercially reasonable amount of time. Should SMARTCLINIX change its address, it shall notify licensee within a commercially reasonable amount of time via email, an update within the software, or any other commercially reasonable means.
- F. No Agency: Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between parties.
- G. Survival: Sections which, by their terms, contemplate survival, will survive any termination of this Agreement.
- H. Severability: In case any one or more of the provisions contained in this Agreement (including any applicable Addendum), shall, for any reason, be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.