

**Fill in this information to identify the case:**

Debtor 1 Curae Health, Inc.

Debtor 2  
(Spouse, if filing) \_\_\_\_\_

United States Bankruptcy Court for the: Middle District of Tennessee

Case number 18-05665

## Official Form 410

## Proof of Claim

12/15

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

**Part 1:** Identify the Claim

1. Who is the current creditor?	<u>MEDHOST Cloud Services, Inc.</u> Name of the current creditor (the person or entity to be paid for this claim)		
	Other names the creditor used with the debtor <u>f/k/a YourCareUniverse, Inc.</u>		
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent?  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>		<b>Where should payments to the creditor be sent? (if different)</b>
	<u>MEDHOST</u> Name <u>6550 Carothers Parkway, Ste 160</u> Number Street <u>Franklin</u> <u>TN</u> <u>37067</u> City State ZIP Code Contact phone <u>615-761-2267</u> Contact email <u>Bryan.MacKenzie@MEDHOST.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		 Name _____ Number Street _____ City State ZIP Code _____ Contact phone _____ Contact email _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____		Filed on _____ MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		

**Part 2:** Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No  
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_

7. How much is the claim? \$ 236,626.53,\* Does this amount include interest or other charges?  
\*plus fees and reimbursements under 11 U.S.C. §365(b) ☒ No  
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Master Products and Services Agreement

9. Is all or part of the claim secured? ☒ No  
☐ Yes. The claim is secured by a lien on property.  
**Nature of property:**  
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
☐ Motor vehicle  
☐ Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
☐ Fixed  
☐ Variable

10. Is this claim based on a lease? ☒ No  
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff? ☒ No  
☐ Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$2,775\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

☐ Wages, salaries, or commissions (up to \$12,475\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/14/2018  
MM / DD / YYYY

/s/ Thomas H. Forrester

Signature

Print the name of the person who is completing and signing this claim:

Name	Thomas	H.	Forrester
	First name	Middle name	Last name
Title	Attorney		
Company	Gullett, Sanford, Robinson & Martin, PLLC		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	150 Third Ave South, Suite 1700		
	Number	Street	
	Nashville	TN	37201
	City	State	ZIP Code
Contact phone	615-244-4994	Email	tforrester@gsrm.com

Totals by Entity		
MEDHOST of Tennessee, Inc.	MEDHOST Direct, Inc.	YourCareUniverse, Inc.
79,306.98	9,248.37	4,040.39
121,529.64	48,352.62	21,671.04
988,913.25	69,810.54	88,328.20
989,571.28	70,052.29	78,304.69
622,037.46	25,600.22	31,357.71
56,846.27	26,787.83	12,924.50
2,858,204.88	249,851.87	236,626.53



YourCareUniverse, Inc.  
6550 Carothers Parkway, Suite 100  
Franklin, Tennessee 37067

## MASTER PRODUCTS AND SERVICES AGREEMENT

This MASTER PRODUCTS AND SERVICES AGREEMENT is made and entered into by and between YourCareUniverse, Inc., a Delaware corporation ("YCU"), and, Curae Health ("Customer").

### 1. INTRODUCTION.

This Master Products and Services Agreement will govern the Products and Services that Customer procures from YCU, as further specified in Product Schedules, Statements of Works, and/or other attachments (collectively, "Exhibits"). This Master Products and Services Agreement and the Exhibits will collectively compose what is referred to as the "Agreement." The most common Exhibits will be:

- 1.1. **Product Schedules.** A "Product Schedule" will contain: (a) specific details about the particular Products that Customer is procuring, including product descriptions, pricing and term; (b) a list of the specific hospitals, clinics and/or other facility locations that are licensed to access and use the specified Product(s) (the "Licensed Sites"); (c) additional terms and conditions governing the use of such Product(s), including any end user license agreements required by third-party suppliers of applications or data that is either included with or sold in connection with the Product(s); and (d) any other specifications or references thereto (e.g., Support terms, minimum technical standards and technical product notes).
- 1.2. **Statements of Work.** A "Statement of Work" or "SOW" will provide: (a) specific details about the particular Services and/or Deliverable Customer is procuring, including descriptions, pricing and term; (b) additional terms and conditions governing the provision of the Services; and (c) any other specifications (e.g., scope of work, responsibilities, assumptions and period of performance) for such Service and Deliverables. SOWs will specify a term (the "SOW Term"), which could be: (a) a specific period of time estimated to complete the one-time Services; or (b) a specific term of months for the provision of ongoing Services. YCU offers a large number of Services, but the Services provided by YCU include, but are not limited to:
  - 1.2.1. **Onboarding Services.** "Onboarding Services" are those Services performed by YCU under an SOW to activate the Licensed Sites for the use of Products.
  - 1.2.2. **Training Services.** "Training Services" are those Services provided by YCU under an SOW to educate and train end users in the use of the Products.
  - 1.2.3. **Consulting Services.** "Consulting Services" are those Services provided by YCU under an SOW that are designed to help build a strategy around the digital patient community and/or reengineer/optimize Customer's operations.
- 1.3. **Business Associate Addendum.** The Business Associate Addendum (BAA), attached hereto as an Exhibit, governs the access, use and disclosure of Protected Health Information (PHI) made available to YCU under the Agreement as required by the Health Insurance Portability and Accountability Act (HIPAA).

### 2. DEFINITIONS. Capitalized terms used (and not defined elsewhere) in the Agreement will have the respective meanings set forth below:

- 2.1. **"Affiliate(s)"** means with respect to an entity party to the Agreement, any entity which, directly or indirectly, controls, is controlled by or is under common control with such party, where control means the ability to direct the affairs of an entity through ownership, voting interest, contract rights or otherwise.
- 2.2. **"Customer Data"** means the data that originates from the personnel and patients of Customer and/or the Licensed Site(s) and that is provided by Customer to YCU through the Products and Services procured hereunder. "Customer Data" does not include the type of non-identifiable information described in [subsection 10.8](#).
- 2.3. **"Deliverable"** means any work product that is provided to Customer by YCU as the result of Services performed by YCU under an SOW.



- 2.4. "Documentation" means all user manuals, training materials, guides, listings, specifications, and other materials prepared by YCU for use by its general customer base in connection with the Products and Services offered by YCU and likewise provided to Customer for its use hereunder.
- 2.5. "Intellectual Property Rights" means any and all tangible and intangible: (i) rights associated with works of authorship, including copyrights, moral rights, neighboring rights, and derivative works thereof, (ii) trademark and trade name rights, (iii) trade secret rights, (iv) patents, design rights, and other industrial property rights, and, (v) all other intellectual property rights (of every kind and nature however designated) whether arising by operation of law, treaty, contract, license, or otherwise, together with all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof.
- 2.6. "Go-Live" means the certain time at which a particular Product becomes available for access and use by Customer.
- 2.7. "Products" will mean all products provided, or otherwise made available, by YCU to Customer, including, but not limited to, software applications or services that are hosted by YCU as software as a service (SaaS) and provided via certain Internet-based or remote-access methods.
- 2.8. "Product Term" will mean the period of time specified in a Product Schedule for which the Licensed Sites will have the right to use and/or access the applicable Product(s).
- 2.9. "Services" means any work, including the provision of Deliverables, which is performed for or on behalf of Customer by YCU pursuant to an SOW or a Product Schedule, as applicable.
- 2.10. "Support" means the support services provided after delivery of the Product(s), including remote troubleshooting and basic usability assistance. Remote troubleshooting may be delivered via telephone, online communication media or without human assistance through automated means that reside within the Product(s) or are available on the Internet.
3. **TERM AND TERMINATION.**
- 3.1. **Term.** The Agreement will remain in effect until terminated in accordance with the terms below. The length and renewal of any particular Product Term or SOW Term will be specified in the applicable Product Schedule or SOW.
- 3.2. **Annual Fee Adjustment.** On each one-year anniversary of this Agreement, a 5% increase will be applied to all recurring fees charged in connection with the Products and Services provided hereunder. YCU will send a reminder notice to Customer sixty (60) days prior to such increase.
- 3.3. **Voluntary Termination.**
- 3.3.1. **Product Schedules.** Unless otherwise specified in the Exhibit, either party may terminate a Product Schedule that is set to automatically renew by providing written notice to the other party no less than four (4) months prior to the start of the next renewal term.
- 3.3.2. **SOWs.** Unless otherwise specified in the Exhibit, Customer may terminate an SOW by providing thirty (30) days written notice to YCU, provided that Customer pays all costs and fees incurred under the SOW as of the date of YCU's receipt of the notice, as well as all fees scheduled to be incurred under the SOW within the 30 days following YCU's receipt of the written notice.
- 3.3.3. **Master Agreement.** In the event that all Product Schedules and SOWs have expired by their own terms or have otherwise been terminated as specified herein, either party may terminate the entire Agreement by sending written notice to the other party. The parties may also mutually agree to terminate the entire Agreement in writing.
- 3.4. **Termination for Cause.**

- 3.4.1. **Termination for Default.** In the event a party defaults in the performance of any of its material obligations under the Agreement and such default remains uncured for thirty (30) days (or as otherwise agreed in writing between the Parties) after the defaulting party's receipt of written notice specifying the nature of such default, then the non-defaulting party may terminate the Agreement upon further written notice to the defaulting party. Notwithstanding the foregoing, if YCU is providing Products and/or Services under multiple active Exhibits, and YCU defaults on an obligation that is material to only one Exhibit, then Customer may terminate that Exhibit (but not the Agreement as a whole) upon written notice if such default remains uncured for thirty (30) days (or as otherwise agreed upon in writing between the Parties) after YCU's receipt of written notice specifying the nature of the default. In the event YCU's failure to perform is due to circumstances described in subsection 9.4, the time for YCU to cure the default will be extended until such circumstances have been resolved, plus an additional period of ten (10) days thereafter.
- 3.4.2. **Termination for Insolvency.** The Agreement will terminate automatically, without the requirement of notice, in the event of the institution by or against either party of insolvency, receivership or bankruptcy proceedings, or any other proceedings for the settlement of its debts and such proceeding is not dismissed within sixty (60) days of it being filed, or in the event that either party makes an assignment for the benefit of creditors.
- 3.4.3. **Termination for Failure to Pay.** If Customer fails to pay any amount owed to YCU when due, YCU will have the right in its discretion to suspend Support and/or deny access to any Products, Services or Deliverables provided hereunder. Customer failure to pay any amount will also be considered a material default and YCU may exercise all rights and remedies provided herein.
- 3.4.4. **Effect of Termination.**
- a. **Payments.** In the event of termination of the Agreement by YCU pursuant to this subsection 3.3, Customer will remain obligated to pay, and YCU will have the option to accelerate the payment requirement of, any and all amounts due hereunder, including the remainder of payments due under any existing Product Term and/or SOW Term. Exercise of this right will not affect YCU's right to exercise any other remedies available to it under law or equity.
  - b. **Product Access.** Upon termination or expiration of the Agreement, YCU will terminate all access to the Products provided hereunder.
  - c. **Survival.** The following sections, and all defined terms used herein, will survive the expiration or termination of the Agreement: subsections 3.3.4 and Sections 1, 2, 4, 5, 7, 8, 9 and 10.

#### 4. PROPRIETARY RIGHTS.

- 4.1. **Customer Rights.** Customer may obtain certain rights to certain Deliverables provided under an SOW as specified in the applicable SOW. Any and all rights in the materials provided to Customer under the Agreement, and not otherwise specifically granted herein to Customer, are expressly reserved by YCU (or its suppliers and licensors, as applicable). Customer acknowledges and agrees that YCU's (and/or its applicable suppliers' and licensors') retention of contractual and Intellectual Property Rights is an essential part of the Agreement.
- 4.2. **YCU Rights.** The Documentation, Products (and any software owned or controlled by YCU utilized in connection therewith), and any other computer software programs, ideas, schematics, industrial models, inventions, know-how, trade secrets, and other intangible proprietary information of YCU (collectively, the "YCU IP") shall remain the sole and exclusive property of YCU (or its suppliers and licensors, as applicable), and YCU claims and reserves all Intellectual Property Rights and other rights it has or may have therein, notwithstanding the grant of the licenses and/or subscriptions provided hereunder.
- 4.3. **Special Remedies.** If Customer attempts to use, copy, license or convey any of the YCU IP in any manner other than expressly permitted under the Agreement, then YCU shall have, in addition to any other remedies available to it under applicable law or otherwise, the right to injunctive relief enjoining such action and/or other equitable relief. Customer acknowledges and agrees that all other remedies are inadequate.



- 4.4. **Ownership of Improvements or Suggestions.** YCU and its Affiliates (and its suppliers and licensors, as applicable) will own, and Customer hereby assigns to YCU, all Intellectual Property Rights in (i) any copy, translation, modification, adaptation or derivative work of the YCU IP, including any improvement or development thereof, whether provided as part of Support, Services or otherwise, and whether or not developed by or for the Customer, and (ii) any suggestions, ideas, enhancement requests, feedback, or recommendations provided to YCU by or on behalf of Customer. YCU and Customer may expressly agree, in a written and mutually executed SOW or other agreement, that Customer will have or obtain ownership of particular items of work product, in which case the rights in such items will be as set forth in such SOW; provided, however, that the intent for Customer to have or obtain ownership must be expressly stated in the SOW (and, for clarity, the parties agree that reference to development in accordance with Customer's instructions will not be sufficient). In the event that by operation of law or otherwise, Customer may have or claim any right, title, or interest in any work product of YCU, other than work product that the parties have agreed in an SOW in compliance with this Section is to be owned by Customer, Customer hereby assigns to YCU, and shall cause the effective assignment to YCU of all such right, title, and interest, and shall take all such steps as YCU shall reasonably request (including the procurement and execution of assignments and other documents) to effect, enable, confirm, or record such assignment, all at YCU's sole expense.
- 4.5. **General Restrictions on Use of YCU IP.** The YCU Products are limited to use by a particular Licensed Site for the business operations of such Licensed Site. Customer is responsible for all access to and use of the Products by the Licensed Sites. Use of the Products at, by or for hospitals, clinics and/or other facility locations not listed on the Product Schedule is a violation of both the Agreement and US Copyright laws. Customer must not do or attempt to do, or permit others to do or attempt to do, any of the following: (a) view, read, modify, port, adapt or create derivative works of the Product(s); (b) reverse compile, reverse assemble, disassemble or print the Product(s)'s source code or object code or other runtime objects or files related to the Product(s) or otherwise reverse engineer, modify or copy the look and feel, functionality or user interface of any portion of the Product(s); (c) rent, lease, distribute (or redistribute), provide or otherwise make available the Product(s), in any form, to any third party; (d) share use or access of the Product(s) with other practitioners who are not employees or patients of Customer; (e) share any online account or online account access information with third parties; (f) create any "links" to or "frame" or "mirror" the Product(s) or any portion thereof; (g) defeat, disable or circumvent any protection mechanism related to the Product(s); (h) use the Product(s) to process the data of third parties not associated with the Licensed Sites; or (i) publish, distribute (or redistribute) or sell any document or work product retrieved or generated through the Product(s) to any third party, except for documents prepared for patients within the scope of the normal and intended use of the Product(s). In addition, Customer shall not violate or attempt to violate the security of YCU's networks or servers, including: (x) accessing data not intended for a Licensed Site or log into a server or account which the Licensed Site is not authorized to access; (y) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper written request and authorization by YCU; or (z) attempting to interfere with service to any user, host or network, including by means of submitting a virus, overloading, flooding, spamming, mail bombing or crashing. For the avoidance of doubt, the restrictions within this subsection 4.5 shall also apply to the software and products owned by any third party supplier or licensor of YCU and that is provided to Customer in connection with the Products and/or Services.
- 4.6. **IP Audit.** Upon YCU's written request, Customer must furnish YCU with a signed certificate verifying that the Products are being accessed and used in compliance with all of the terms and conditions of the Agreement, including being accessed and used only by, at and for Licensed Sites. At its expense, YCU, itself or by its third party agents, may audit Customer's compliance with the requirements of the Agreement. Any such audit will be conducted not more than once per calendar year and during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. During any such audit, YCU (and/or its designee(s)) may have access to Customer's computer systems and records and conduct forensic reviews thereof and may interview any of Customer's current and former employees and contractors. If YCU determines that Customer has not paid the proper fees required pursuant to the Agreement for Customer's access or use of the Products, Customer will be invoiced for such fees, plus an additional 1.5% monthly interest rate, or the maximum lawful amount, of the unpaid Fees (dating back to the time when such fees should have been paid). Customer must pay (directly or by reimbursing YCU) the reasonable cost of the audit if the audit detects unpaid fees or unauthorized usage that exceeds five percent (5%) of the total fees actually paid for the period so audited. This right will not limit or preclude any additional remedies available to YCU provided by law or equity.



## 5. CONFIDENTIALITY.

- 5.1. **Nonuse and Nondisclosure.** In the performance of the Agreement, each party may disclose to the other party certain "Confidential Information", which for purposes of the Agreement shall mean all nonpublic information revealed by or through the disclosing party to the recipient and which is: (i) information marked or disclosed as confidential; (ii) information traditionally recognized as proprietary trade secrets; (iii) all forms and types of financial, business and economic information (including, without limitation, financial statements, business records and plans, technical and marketing data, trade information, supplier information and marketing plans), whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, whether identified with the legend "CONFIDENTIAL" or not; and (iv) any information disclosed orally regarding the parties' business relationship. The terms of the Agreement shall also be considered Confidential Information of YCU. Neither party will disclose or use the other party's Confidential Information except for the sole purpose of performing the Agreement, and each party will keep confidential and safeguard such information against unauthorized disclosure to others with at least the same degree of care as it exercises with its own information of a similar nature, but in no event less than reasonable care.
- 5.2. **Exceptions.** Confidential Information will not include information that: (i) qualifies as PHI or personally identifiable information and as such is more appropriately governed by the BAA; (ii) the receiving party can demonstrate by written records was already rightfully known to that party prior to its receipt from the disclosing party; (iii) is now, or becomes in the future, public knowledge through no fault, act or omission of the receiving party; (iv) is independently developed by the receiving party without any use of or reference to the disclosing party's Confidential Information; or (v) is acquired by the receiving party from a third party having a legal right to so disclose without restriction on such disclosures. In addition, the receiving party may disclose Confidential Information of the disclosing party to the extent required to be revealed by law, provided that written notice is given in advance to the disclosing party (if not prohibited by law) so that it can seek a protective order prior to being disclosed by the recipient. For the avoidance of doubt, YCU will be permitted to disclose Customer's Confidential Information to YCU's subcontractors performing services in connection with the Agreement solely to the extent such disclosure is reasonably necessary for such subcontractors to perform such services, and further provided that YCU shall require such subcontractors to comply with confidentiality obligations no less protective of Customer's Confidential Information than set forth in this Section 5.
- 5.3. **Return of Confidential Information.** Upon expiration or termination of the Agreement, the party receiving Confidential Information will cease its use and upon request, within thirty (30) days, use commercially reasonable efforts to either (at the option of receiving party) return or destroy (and certify in a timely manner as to such destruction) all Confidential Information of the other party, including any copies thereof. Notwithstanding the foregoing, each party receiving Confidential Information will be entitled to keep copies of Confidential Information (i) preserved or recorded in any computerized data storage device or component (including any hard drive or database) or saved automatically to standard back-up or archival systems, and/or (ii) as required by applicable law or regulation for purposes of compliance or otherwise; provided, that such Confidential Information shall remain subject to the confidentiality requirement of the Agreement. The disclosing party will retain all proprietary rights to the information it discloses hereunder, regardless of the expiration of the obligations under this Section 5. The parties' obligations under this Section regarding Confidential Information shall survive the expiration or termination of the Agreement for the maximum period of time that any such Confidential Information is allowed under applicable law to receive the protections required hereunder.
- 5.4. **Remedies.** Each party understands and agrees that monetary damages may not be a sufficient remedy for any breach of this Section 5 and that the non-breaching party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any breach or threatened breach. Such remedy may not be deemed to be the exclusive remedy for a party's breach of this Section 5, but may be in addition to all other remedies available at law or equity to the other party.

## 6. REPRESENTATIONS AND WARRANTIES.

- 6.1. **Customer.** In addition to any representations and warranties that may appear in an Exhibit, Customer hereby represents, warrants and covenants to YCU that:



- 6.1.1. Customer has all necessary legal capacity, right, power, and authority to enter into, execute, deliver, and be bound by the Agreement in accordance with its terms and conditions;
  - 6.1.2. the execution and delivery of the Agreement and performance by Customer of the obligations under the Agreement does not breach and will not result in a breach or violation of any agreement, lien, security interest, or obligation to which Customer is bound, nor any law, rule, or regulation, state or federal, applicable to Customer;
  - 6.1.3. the person or entity executing the Agreement is expressly authorized to bind the Customer to the terms and conditions contained herein;
  - 6.1.4. Customer will assume all responsibility for obtaining and maintaining (so as to remain compatible with the standards set forth by YCU) all telephone, computer hardware, software, Internet service, dedicated transmission lines and all other equipment and utilities that the Licensed Sites need for access to and use of the Product(s), and for all costs associated therewith;
  - 6.1.5. there is no demand, claim, suit, action, arbitration, or other proceeding pending or threatened (including the filing of bankruptcy) that in Customer's reasonable opinion jeopardizes the ability of Customer to enter into the Agreement or to perform any of Customer's obligations hereunder;
  - 6.1.6. Customer is solely responsible for any coding, request for reimbursement and/or submission to any federal or state agency or any other third party in question in connection with the Products and Services provided hereunder and YCU will not be, nor function as, nor be deemed to be functioning as, a so-called "billing agency" or "healthcare clearing house" hereunder; and
  - 6.1.7. Customer agrees it will be responsible for the activity of all Licensed Sites in connection with the Agreement, as well as all activity within the Product(s) that occurs through access that is identified as originating from the online accounts provided to Customer hereunder, to the same extent as if Customer itself were performing such activity, and shall cause each Licensed Site to comply with and be subject to the terms and conditions of the Agreement.
- 6.2. YCU. In addition to any representations and warranties that may appear in an Exhibit, YCU represents, covenants, and warrants to Customer as follows:
- 6.2.1. YCU has all necessary legal capacity, right, power, and authority to enter into, execute, deliver, and be bound by the Agreement to the extent allowed by law;
  - 6.2.2. the execution and delivery of the Agreement and performance by YCU of the obligations under the Agreement does not breach and will not result in a breach or violation of any agreement, lien, security interest, or obligation to which YCU is bound, nor any law, rule or regulation, state or federal, applicable to YCU;
  - 6.2.3. there is no demand, claim, suit, action, arbitration, or other proceeding pending or threatened (including the filing of bankruptcy) that in YCU's reasonable opinion jeopardizes the ability of YCU to enter the Agreement or to perform any of YCU's obligations hereunder; and
  - 6.2.4. YCU has all rights and/or licenses necessary to perform under the Agreement.

## 7. INDEMNIFICATION.

### 7.1. Indemnification.

- 7.1.1. Subject to the other terms and conditions set forth herein, YCU agrees to defend Customer and its employees, officers and directors (the "Customer Indemnitees") at YCU'S sole cost and indemnify the Customer Indemnitees (by paying for damages finally awarded against any such Customer Indemnitees or any amounts payable in any settlement entered into in compliance with the Agreement) from and against any claims, demands, actions or proceedings by any unaffiliated third party alleging that the Products and/or Services as provided hereunder infringes or violates such third party's United States patent, copyright or trade secret rights; provided that, YCU shall have no obligation with respect to any claims of infringement



that arise from, and Customer shall indemnify and hold harmless YCU for: (i) modifications to the Products or Deliverables by Customer; (ii) combinations made by Customer of the Products or Deliverables with other software or products not provided or authorized in writing by YCU; (iii) any modifications to the Products or Deliverables made at the request of Customer, or which conform to its specifications; (iv) any misuse or unauthorized use of the Products or Deliverables by Customer or otherwise made under one of Customer's online accounts; or (v) claims based upon the combination, operation or use of the Products or Deliverables with products not furnished by YCU, when such combination is a part of any allegedly infringing process.

7.1.2. Customer agrees to indemnify, defend and hold harmless YCU and its Affiliates and their respective directors, officers, employees and agents, against any and all judgments, settlements, penalties, costs and expenses (including reasonable attorney's fees) paid or incurred in connection with any third-party claim that arises from any use by Customer of the Products, Services or Deliverables in manner that is in violation of the Agreement, applicable laws, rules or regulations.

7.1.3. If a Product or Deliverable becomes, or in YCU's opinion, is likely to become, the subject of a third party claim covered by YCU's indemnification obligations hereunder, then YCU may, in its sole discretion and at its sole cost and expense: (i) procure for Customer the right to continue using such Product or Deliverable; (ii) modify the infringing portion of the Product or Deliverable so as to render it non-infringing but still appropriate for its intended use under the Agreement; or (iii) replace the infringing portion of the Product or Deliverable with non-infringing items with substantially similar functionality. If YCU reasonably determines that none of the foregoing is commercially practicable, then YCU may elect to terminate the Agreement and grant Customer a refund of the fees paid for the affected Product, less an allocation for use made by Customer prior to the termination.

7.2. **Process.** The indemnities in this Section 7 are contingent on: (i) prompt written notification to the indemnifying party of any claim which may give rise to a claim for indemnification (provided, however, that failure to provide such prompt notice will not affect indemnification obligations in the absence of actual prejudice); (ii) the indemnifying party being allowed to control the defense and settlement of such claim; and (iii) the indemnified party cooperating with all reasonable requests of the indemnifying party (at the expense of the indemnifying party) in defending or settling a claim. The indemnified party shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing. The indemnifying party may settle any such claim; provided, however, that no compromise or settlement of any claim admitting liability of, or imposing duties or restrictions upon the indemnified party may be agreed to without the prior written consent of the indemnified party, which shall not be unreasonably withheld or delayed.

## 8. LIMITATIONS OF WARRANTIES AND LIABILITY.

8.1. **Limited Warranty.** Except as expressly set forth in Section 6.2 or any Exhibit, all Products and Services are provided "AS IS" and YCU makes no other warranties express or implied, including without limitation any implied warranties of title, non-infringement, merchantability or fitness for a particular purpose, irrespective of any course of dealing or performance, custom or usage of trade. YCU does not warrant: (a) that the Products or Services or use thereof or any third party software will be uninterrupted or free of errors; (b) that any Product or Service provided hereunder will meet Customer's requirements; or (c) that future updates, upgrades or versions of the Products will not require Customer to modify, update or upgrade Customer's hardware, network or computer system. Customer will be solely responsible for the selection and suitability of the Products and Services it procures from YCU.

8.2. **Liability Limits.** In no event will YCU have obligations or liabilities for damages other than ordinary monetary damages; the total ordinary monetary damages arising out of or related to the Agreement shall not exceed the actual fees paid by Customer under the Exhibit governing the specific Product or Service that gave rise to the liability and further shall not exceed the actual fees paid under that Exhibit during the twelve (12) months immediately preceding the first event giving rise to liability. In no event will YCU's suppliers or licensors be liable for any direct damages of any kind, unless a written, signed agreement between Customer and such supplier or licensor says otherwise. Neither YCU nor its suppliers or licensors will be liable under any contract, negligence, strict liability, or other legal or equitable theory for any indirect, exemplary, special, incidental, or consequential damages, including but not limited to loss of profits or other economic loss of Customer or any third party, even if informed of the possibility of such damages. The limitation of liability and



types of damages stated herein are intended by the parties to apply regardless of whether any limited remedy provided for in the Agreement fails of its essential purpose.

- 8.3. **Third-Party Software.** YCU makes no representations or warranties with respect to any third party software that may be provided along with or used in connection with the Product(s) and/or Service(s). Customer is responsible for compliance with the applicable terms and conditions for any third party software that is made available by YCU or such third party software provider in connection with Customer's use of such software; any such terms and conditions are exclusively between Customer and such third party, and YCU shall have no liability or responsibility with respect to such software, product or service, and Customer releases YCU from all liability and responsibility with respect thereto. Customer further acknowledges and agrees that any third party software, product or service provided hereunder may be terminated by YCU upon termination or expiration of the applicable agreement between YCU and such third party.
- 8.4. **Internet Disclaimer.** The Products may be delivered via the Internet, which is known to be unpredictable in performance and may, from time to time, impede access to the Products or performance hereunder. Customer agrees that YCU is not in any way responsible for any interference with Customer's use of or access to the Products arising from or attributable to the Internet and Customer waives any and all claims against YCU in connection therewith.
- 8.5. **Customer Data.** Except to the extent governed by the BAA, in no event will YCU or its suppliers or licensors be liable for any damages, consequential or otherwise, arising out of or related to any loss of Customer Data, whether caused by transmission of Customer Data, the Products, the software incorporated therein, or otherwise. Neither YCU nor its suppliers or licensors will be liable for the accuracy or completeness of Customer Data, whether such Customer Data has been processed by the Products or otherwise. Customer is responsible for the development and execution of administrative procedures and other prudent business, technological and data security practices necessary to protect, control and maintain the integrity of the Customer Data physically located on, or transported over, its own network, including validation of users who need to access the network, physical security of computers on its network, and security of data that is exported from or otherwise taken off of the network.
- 8.6. **Professional Judgment.** Customer acknowledges and agrees that the Products and Services: (a) are to be utilized by Customer, its staff, employees and authorized agents to assist in certain data processing activities; and (b) are in no way intended to replace the professional skill and judgment of Customer's personnel. Customer will not rely on YCU or any of its licensors or suppliers for any professional advice (including, without limitation, medical or healthcare advice). Customer agrees that: (a) it is solely responsible for the care of its patients; (b) that the use of the Products and/or Services for any purpose related to such care does not relieve Customer of that responsibility; and (c) actual use of the Products and/or Services by Customer cannot in any way be controlled by YCU. Customer is responsible for verifying the accuracy and completeness of any medical or other similar information contained in, entered into, or used in connection with the Products and/or Services or otherwise in connection with the Agreement.

**9. ENFORCEMENT OF AGREEMENT.**

- 9.1. **Laws and Jurisdiction.** The Agreement, and the rights and obligations of the parties thereunder, shall be governed by and in strict accordance with the laws of the State of Tennessee, without regard to its conflict of law rules. The Agreement and its subject matter have substantial contacts with Tennessee, and all actions, suits, or other proceedings with respect to the Agreement must be brought only in a court of competent jurisdiction sitting in Nashville, Tennessee. In any action, suit or proceedings, such court shall have personal jurisdiction of all of the parties hereto, with each party specifically consenting to extraterritorial service of process for that purpose. EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES.
- 9.2. **Limitations Period.** Except for (a) collection actions, (b) breaches of confidentiality, (c) infringement of YCU Intellectual Property Rights, (d) claims for indemnification (e) claims for the recovery of attorney's fees, or (f) or breach of a party's express representations and warranties, all of which may be brought within the time limits set by applicable law, any claim or cause of action arising under or otherwise relating to the Agreement, or the subject matter hereof or thereof, whether based on contract, tort (including negligence) or otherwise, must be commenced within one year from the date such claim or cause of action first arose.



- 9.3. **Collections.** Customer must pay all fees as set forth on the applicable Exhibit, as invoiced, within thirty (30) days of the invoice date. YCU will assess a late payment fee equal to the lesser of one and one-half percent (1½%) of the unpaid amount or the highest interest rate allowed by applicable law for each succeeding thirty (30) day period or portion thereof in which fees are not paid in full. In addition, YCU, in its discretion, may suspend or deny access to Support, Service or the Product(s) if there is an unpaid invoice that is outstanding. Customer will pay all of YCU's attorneys' fees and costs and expenses incurred in the enforcement of any of Customer's payment obligations hereunder.
- 9.4. **Inability to Perform.** YCU shall not be liable for any failure to perform under the Agreement if that failure is the result of YCU being unable to obtain materials, parts, or supplies through usual and regular sources or on a timely basis or if the failure relates to interruption of transportation, government regulation, labor disputes, strikes, riots, epidemics, war, terrorism, cyber-terrorism, fire, flood, accident, acts of God, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, hackers or any other reasonably unanticipated cause beyond YCU's reasonable control that materially affects YCU's ability to perform its responsibilities under the Agreement. YCU agrees to notify Customer promptly if such situation should arise.
- 9.5. **Severability.** If any provision of the Agreement is held to be invalid, illegal or unenforceable, such provision shall be, to the maximum extent permitted by applicable law, construed or limited, and/or deemed replaced by a revised provision, to the extent (and only to the extent) necessary to render it valid, legal and enforceable and, as nearly as possible, to reflect and achieve the parties' intentions in agreeing to the original provision. If it is not possible to so construe, limit or reform any such provision, then the invalid, illegal or unenforceable provision shall be severed from the Agreement. In any event, the remaining provisions of the Agreement shall be unaffected thereby and shall continue in full force and effect.
- 9.6. **Parties Bound.** The Agreement binds and inures to the benefit of the parties and their respective successors and permitted assigns.
- 9.7. **No Third Party Beneficiaries.** Except for permitted assigns, no provisions of the Agreement, express or implied, creates, and should not be construed as creating, any rights enforceable by any person or entity not a party to the Agreement. YCU and Customer are the only parties entitled to enforce the rights set out in the Agreement.
- 9.8. **Waiver.** No provision of the Agreement shall be deemed waived unless such waiver is contained in a written instrument signed by the party to be charged therewith. Should either party waive any individual default by the other party in writing, such waiver shall not be construed as a waiver of that party's rights upon subsequent defaults, whether or not similar.
- 9.9. **Headings.** The headings in the Agreement are for convenience and reference only and shall not be given any effect in the interpretation of the Agreement.
- 9.10. **No Construction against Drafter.** Each of the parties agrees it has read the Agreement, understands it, and agrees to be bound by its terms and conditions. Each of the parties hereto acknowledges that it has had the opportunity to be represented by independent legal counsel of its choice prior to entering into the Agreement. As a consequence, the parties agree that in construing the Agreement, no provision hereof shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 9.11. **Notices.** All notices given under the Agreement must be in writing and delivered by a nationally recognized delivery service or by prepaid certified mail, return receipt requested (which notice shall be deemed duly given and delivered five (5) days after deposit in U.S. certified mail), or hand delivered to the address of the recipient shown below the signature line herein. Either party may change its address by notice to the other party.
10. **MISCELLANEOUS.**
- 10.1. **Entire Agreement.** The Agreement represents the entire, complete and exclusive statement of the terms and the agreement between the parties, superseding any and all understandings, prior representations and agreements, whether oral or written, and all other communications relating to the subject matter of the Agreement. To the extent there is a conflict between the terms and conditions of this Master Products and Services Agreement and those contained in an Exhibit, the terms and conditions of this Master Products and Services Agreement will prevail. No



performance or delivery by YCU shall be deemed or construed as acceptance of Customer's additional or different terms and conditions which may be contained in any document associated herewith.

- 10.2. **Modification.** Notwithstanding the parties' ability to enter into Exhibits, the Agreement may not otherwise be modified except by written amendment or modification executed by an authorized representative of each of YCU and Customer. No representative of YCU has any authority to bind YCU to any affirmation, representation or warranty other than the express terms of the Agreement and its amendments.
- 10.3. **Assignment.** Neither the Agreement nor any of the rights or obligations of either of the parties hereto may be assigned, transferred or sublicensed without the prior express written consent of the other party hereto. Any attempt by either party to assign any portion of the Agreement without the prior express written consent of the other party shall render such assignment voidable at the election of such other party. Notwithstanding the foregoing, YCU may assign the Agreement and its rights and obligations hereunder to (1) an Affiliate or (2) to any third party acquiring all or substantially all of the assets of YCU or the YCU assets specific to a particular Exhibit.
- 10.4. **Taxes.** Fees are exclusive of any taxes, assessments or duties that may be assessed upon the Products or Services provided under the Agreement or on third-party fees disclosed in an invoice, including sales, use, excise, value added, personal property, electronic/Internet commerce, export, import, and withholding taxes. Customer is responsible for directly paying any such taxes assessed against it, and Customer will promptly reimburse YCU for any such taxes payable or collectable by YCU. Such taxes do not include taxes based upon YCU's income. Taxes are calculated on the Products and/or Services plus additional charges, where applicable. Taxes include state and local sales or use taxes and are based upon the Customer's address and/or the Licensed Sites. Tax exemption certificates, if any, must be submitted at the time of order.
- 10.5. **Publicity.** YCU or its Affiliates may issue a press release(s) regarding YCU's relationship with Customer, subject to advance approval by Customer (but such approval is not to be unreasonably withheld), and may also identify Customer on their website(s) as a Customer. Neither party may otherwise use any of the other party's logos, trademarks, or written or verbal quotes in any public statements, advertisements, or promotional or marketing material relating to the Agreement without the express written consent of the other party (except to the extent of any disclosure required by applicable law, including without limitation securities laws).
- 10.6. **Independent Contractors.** The parties to the Agreement are independent contractors and no agency, partnership, joint venture, or employee-employer relationship is intended or created by the Agreement. Neither party shall have the power to obligate or bind the other party.
- 10.7. **Export Restrictions.** Customer is advised that the Products and Deliverables may be subject to access and export controls under United States laws and regulations, including the U.S. Export Administration Regulations, and diversion contrary to U.S. law and regulation is prohibited. Customer agrees to not directly or indirectly access, export, import or transmit any Product or Deliverable from or to any country, end user or for any end use that is prohibited by any applicable U.S. regulation or statute (including those countries embargoed from time to time by the U.S. government or the United Nations). Additionally, Customer agrees not to directly or indirectly access, export, import, transmit or use any Product or Deliverable contrary to the laws or regulations of any other governmental entity that has jurisdiction over such access, export, import, transmission or use.
- 10.8. **Data Transmission Notification.** Besides Customer Data, the Products may transmit to YCU servers various non-identifiable information relating to access and use of such Products, as well as general information about the Licensed Site's computer system (for example, system configuration, type of internet connectivity, RAM, CPU, operating system and browser version). YCU may use this information for purposes of improving, enhancing or further developing the Product(s), for internal quality assurance and software error checking, to assist users and as otherwise necessary or appropriate to perform its obligations pursuant to the Agreement.
- 10.9. **Remote Support.** Support from YCU may be provided through remote connection, which significantly enhances YCU's ability to resolve problems. Customer acknowledges that by requesting such assistance, YCU customer support personnel will obtain access to and control of the requesting computer and will have access to data that resides on the accessed computer. Although all reasonable measures have been taken to ensure that the remote support service is





secure and free of viruses, no warranties are given in connection with the remote services. YCU will not be liable to Customer for any loss or damage caused arising directly or indirectly in connection with the provision of any remote support services.

- 10.10. **Critical Vendor Status.** The Parties recognize that the Products and Services YCU provides to Customer are essential to the operation of the Customer's business; and in the event of bankruptcy, a disruption in service due to non-payment would be detrimental to the reorganization of the Customer. Customer designates YCU to be a Critical Vendor for the purposes of payment priority in the event Customer files a case under Chapter 11 of the United States Bankruptcy Code. Nothing herein, however, shall limit YCU's right to terminate the Agreement upon bankruptcy and/or to refuse to provide further services absent the payment of Customer's existing balance prior to any declaration of bankruptcy.
- 10.11. **Counterparts.** The Agreement may be executed in one or more counterparts, each of which are to be deemed an original and all of which will be taken together and deemed to be one instrument. The counterparts of this Master Products and Services Agreement (as well as all Exhibits) may be executed and delivered by facsimile, emailed PDF or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by such electronic means as if the original had been received.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed by their duly authorized representatives, effective as of the day and year last signed below.

Curae Health

By: Tim S. Brown  
Tim S. Brown (Jul 7, 2015)  
Name: Tim S. Brown  
Title: Senior VP of Finance and Op  
Date: Jul 7, 2015

Notices: Curae Health  
c/o: President  
\_\_\_\_\_  
\_\_\_\_\_

YourCareUniverse, Inc.

By: Kenneth D. Misch  
Kenneth D. Misch (Jul 7, 2015)  
Name: Kenneth D. Misch  
Title: CFO  
Date: Jul 7, 2015

Notices: YourCareUniverse, Inc.  
c/o: General Counsel  
6550 Carothers Parkway, Suite 100  
Franklin, TN 37067



YourCareUniverse, Inc.  
6550 Carothers Parkway, Suite 100  
Franklin, Tennessee 37067

#### HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum (the "BAA"), is entered into and made part of that certain Master Products and Services Agreement, effective as of the effective date thereof, by and between Curae Health ("Covered Entity") and YourCareUniverse, Inc., a Delaware corporation located at 6550 Carothers Parkway, Suite 100, Franklin, TN 37067 ("Business Associate") (individually, a "Party" and collectively, the "Parties"), and supersedes and amends any prior business associate agreement or addendum, and any amendments thereto, between the Parties.

#### RECITALS

**WHEREAS**, Covered Entity is or may be subject to the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and the implementing regulations set forth at 45 C.F.R. Parts 160, 162, and 164 (the "HIPAA Regulations"); and

**WHEREAS**, Covered Entity and Business Associate have entered into, or are entering into, or may subsequently enter into, any licensing of and/or provisioning of software and/or application services, or other documented arrangements, pursuant to which Business Associate may create, receive, maintain, or transmit data for or from Covered Entity that constitutes Protected Health Information to perform services on behalf of Covered Entity (collectively, the "Business Arrangements"); and

**WHEREAS**, Covered Entity and Business Associate intend for this BAA to apply to the Master Products and Services Agreement and each of any other Business Arrangements entered into by and between the Parties by reference; and

**WHEREAS**, Covered Entity and Business Associate desire to set forth the terms and conditions pursuant to which Protected Health Information will be handled between themselves and third parties in order to satisfy HIPAA Regulations, including but not limited to the HITECH Act.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties, intending to be legally bound, agree as follows:

#### ARTICLE I

##### TERMS USED IN THIS BAA

- 1.01 **General Terms.** The following terms used in this BAA will have the same meaning as those terms in the HIPAA Regulations: Breach, Data Aggregation, Designated Record Set, Disclosure, Individual, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Any other words or terms used in this BAA and not otherwise defined in this BAA will have the same meaning as those terms in the HIPAA Regulations.
- 1.02 **"Privacy Standards"** means the Standards for Privacy of Individually Identifiable Health Information set forth in 45 C.F.R. Parts 160 and 164, subparts A & E, as amended.
- 1.03 **Protected Health Information.** Notwithstanding Section 1.01 hereto, "Protected Health Information," as used herein, shall only apply to such information that is created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

#### ARTICLE II

##### OBLIGATIONS OF BUSINESS ASSOCIATE

- 2.01 **Use of Protected Health Information.** Business Associate shall not use Protected Health Information received from the Covered Entity in any manner that would constitute a violation of the Privacy Standards if used by the Covered Entity. Business Associate may Use Protected Health Information: (1) for the proper management and administration of Business Associate; (2) to carry out its legal responsibilities; and (3) as permitted pursuant to this BAA, the Business Arrangements, or as permitted or Required By Law.





- 2.02 **Disclosure of Protected Health Information.** Business Associate shall not Disclose Protected Health Information received from the Covered Entity in any manner that would constitute a violation of the Privacy Standards if Disclosed by the Covered Entity. Business Associate may Disclose Protected Health Information to fulfill its obligations under the Business Arrangements in a manner permitted pursuant to this BAA or as Required By Law. Business Associate may also Disclose Protected Health Information (1) for the proper management and administration of Business Associate or (2) to carry out the legal responsibilities of Business Associate, provided that (a) the Disclosure is Required By Law, or (b) Business Associate obtains reasonable assurances from the party to which such Disclosure is made that such Protected Health Information will be held confidential as provided pursuant to this BAA and only Disclosed as Required By Law or for the purposes for which it was Disclosed to such third party; and the third party agrees to timely notify Business Associate of any Breaches of the confidentiality of the Protected Health Information to the extent it has obtained knowledge of that Breach.
- 2.03 **Safeguards Against Misuse of Information.** Business Associate shall use reasonable and appropriate safeguards, as to comply with 45 C.F.R. Part 164, Subpart C with respect to electronic Protected Health Information, to prevent the Use or Disclosure of Protected Health Information other than as provided for by this BAA.
- 2.04 **Reporting of Disclosures of Protected Health Information.** If Business Associate becomes aware of a Use or Disclosure of Protected Health Information in violation of this BAA, any Security Incident, or any Breach of Unsecured Protected Health Information whether by Business Associate or by any third party to which Business Associate Disclosed Protected Health Information pursuant to Section 2.02 of this BAA, Business Associate will report that Disclosure, Security Incident or Breach to the Covered Entity without unreasonable delay and in no event later than fifteen (15) calendar days after discovery of such Disclosure, Security Incident or Breach by Business Associate. All reports of Breaches shall include the information specified in 45 C.F.R. § 164.410. This BAA serves as Business Associate's notice to Covered Entity that attempted but unsuccessful Security Incidents may occur and that no further notice will be made by Business Associate unless there has been a successful Security Incident or patterns of attempts that Business Associate determines to be suspicious
- 2.05 **Data Aggregation Services.** Pursuant to the Business Arrangements and in accordance with the Privacy Standards, Business Associate may Use and Disclose PHI to provide data aggregation services relating to Covered Entity's health care operations as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B) and to de-identify health information in compliance with 45 C.F.R. §164.502(d) and §164.514(a) and (b). Business Associate has a non-exclusive, worldwide, royalty-free, license to reproduce, Disclose, store, de-identify and otherwise modify and otherwise Use Protected Health Information for these purposes in compliance with the HIPAA Regulations in perpetuity.
- 2.06 **Services for Individuals.** From time to time, Business Associate may provide services directly on behalf of Individuals instead of on behalf of Covered Entity. To the extent Business Associate provides services on behalf of or at the direction of an Individual pursuant to any required authorization, any personal data or health data that Business Associate receives, creates, maintain, or transmits on behalf of the Individual or pursuant to such authorization from an Individual is not Protected Health Information subject to the terms and conditions of this BAA.
- 2.07 **Agreements with Third Parties.** Business Associate shall not Disclose Protected Health Information to a Subcontractor unless a written agreement exists between Business Associate and the Subcontractor that complies with the requirements set forth in 45 C.F.R. §§ 164.314(a) and 164.504(e). Business Associate specifically agrees that it will require that any such agent or Subcontractor agrees to implement reasonable safeguards to protect the confidentiality, integrity and availability of Protected Health Information, including information in electronic form.
- 2.08 **Access to Information.** Within fifteen (15) days of receipt of a request by the Covered Entity for access to Protected Health Information about an Individual contained in a Designated Record Set, Business Associate will make available to the Covered Entity that Protected Health Information for so long as that information is maintained by Business Associate in the Designated Record Set. Business Associate will provide access to the Covered Entity or its agents to the Protected Health Information during regular business hours. Any denials of access to Protected Health Information requested by an Individual shall be the responsibility of the Covered Entity. If the requested Protected Health Information is maintained electronically in one or more Designated Record Sets, Business Associate must provide a copy of the Protected Health Information in electronic form and format requested by the Individual if it is readily producible or, if not, in a readable electronic form and format as agreed to by the Covered Entity and the Individual.
- 2.09 **Availability of Protected Health Information for Amendment.** To the extent Business Associate is required to maintain Covered Entity's Designated Record Set, within fifteen (15) days of receipt of a request from the Covered Entity for the amendment of





an individual's Protected Health Information or a record regarding an Individual contained in a Designated Record Set (for so long as Business Associate maintains the Protected Health Information in the Designated Record Set), Business Associate will incorporate any such amendments in the Protected Health Information.

- 2.10 **Accounting of Disclosures.** Business Associate agrees to provide to the Covered Entity any information in Business Associate's possession as Covered Entity reasonably requests in order to permit Covered Entity to make an accounting to the Individual required by 45 C.F.R. § 164.528 for Disclosures or Uses of Protected Health Information by Business Associate. If an Individual requests an Accounting of Disclosures directly from Business Associate, Business Associate will forward the request and its Disclosure record to Covered Entity within ten (10) days of Business Associate's receipt of the Individual's request. Covered Entity will be responsible for preparing and delivering the Accounting to the Individual. Business Associate will not provide an Accounting of its Disclosures directly to any Individual.
- 2.11 **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the Department of Health and Human Services for purposes of determining the Covered Entity's and Business Associate's compliance with the Privacy Standards. Notwithstanding the foregoing, nothing contained in this BAA shall waive any applicable privileges to such Disclosure, including but not limited to, the attorney-client privilege.
- 2.12 **Compliance with Privacy Standards.** To the extent Business Associate is to carry out an obligation of Covered Entity under the Privacy Standards, Business Associate shall comply with the requirements of the Privacy Standards that apply to Covered Entity in the performance of such obligation.

### ARTICLE III

#### OBLIGATIONS OF COVERED ENTITY

- 3.01 **Notice of Privacy Practices.** Covered Entity will notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.
- 3.02 **Changes to or Revocation of Patient's Authorization.** Covered Entity will notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.
- 3.03 **Restriction of Use or Disclosure of Protected Health Information.** Covered Entity shall notify Business Associate of any confidential communication request or any restriction to the Use or Disclosure of Protected Health Information that affects Business Associate's permitted or required Uses and Disclosures.
- 3.04 **Receipt of Authorizations.** Covered Entity represents and warrants to Business Associate that it will obtain and it will require and cause its authorized users to obtain patient consents and authorizations necessary or desirable to permit Business Associate to Use or Disclose any Protected Health Information in the performance of its obligations pursuant to or as otherwise permitted under this BAA, the Business Arrangements or otherwise pursuant to applicable law in such form and content as are required by applicable laws and regulations.

### ARTICLE IV

#### TERM AND TERMINATION

- 4.01 **Term.** This BAA shall be effective as of the first date occurring after September 24, 2014 (i) that is the effective date of the Master Products and Services Agreement, or (ii) that Business Associate created, received, maintained, or transmitted Protected Health Information on Covered Entity's behalf and will continue until termination in accordance with the terms of this BAA.
- 4.02 **Termination for Cause by Covered Entity.** In the event of a default by Business Associate of the material provisions of this BAA, and provided that the default remains uncured for a period of thirty (30) days after receipt by Business Associate of a





reasonably detailed written notice of default from Covered Entity (or if the default is such that it is not reasonably susceptible to cure within such period, then if the default remains uncured after a reasonable period of time for cure after receipt by Business Associate of such notice), then Covered Entity may terminate this BAA and, at its sole option, the Business Arrangements upon written notice to Business Associate. If Covered Entity elects to terminate the Business Arrangements, Covered Entity shall not possess any other rights or remedies pursuant to the Business Arrangements, termination being Covered Entity's sole and exclusive remedy.

- 4.03 **Termination for Cause by Business Associate.** In the event of a default by Covered Entity of the material provisions of this BAA, then Business Associate may exercise any rights or remedies granted to Business Associate pursuant to the Business Arrangements. In addition, if the default remains uncured for a period of thirty (30) days from the date of receipt by Covered Entity of a reasonably detailed written notice of default, Business Associate may terminate this BAA upon written notice to Covered Entity.
- 4.04 **Termination Upon Expiration of Business Arrangements.** This BAA shall terminate without further action of the Parties upon the termination or expiration of all of the Business Arrangements between the Parties. For the avoidance of doubt, the termination of the Master Products and Services Agreement shall not result in the termination of this BAA if additional Business Arrangements have been entered into between the Parties.
- 4.05 **Effect of Termination.**
- (a) Except as provided in Section 4.05(b), upon termination of this BAA for any reason, Business Associate shall, upon written request by Covered Entity, return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity if feasible.
  - (b) In the event Business Associate determines that returning or destroying the Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity is infeasible, Business Associate's responsibilities under this BAA regarding the Protected Health Information will extend and be limited to those Uses and Disclosures that make the return or destruction of the Protected Health Information infeasible. The Parties agree that it is infeasible for Business Associate to return or destroy Protected Health Information that has been aggregated or is needed for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.
  - (c) Business Associate is permitted to retain copies of any information as required to meet its legal obligations or any information retained in standard archival or computer back-up system or under bona fide internal document retention and business continuity policies and procedures in the ordinary course of business, subject to the protections of this BAA. The termination of this BAA will not alter, rescind, revoke, cancel, or terminate any HIPAA or other authorization from an Individual directing Disclosures or authorizing Business Associate to use, retain, display, transmit, or Disclose any information of the Individual, and, for the avoidance of doubt, such information shall not be considered Protected Health Information.
  - (d) The respective rights and obligations of Business Associate and Covered Entity under this BAA shall survive the termination of this BAA. The following sections, and all defined terms used herein, will survive the expiration or termination of this BAA or the Business Arrangements: Sections 2.05, 4.05 and 5.01.

#### ARTICLE V

##### RESPONSIBILITIES OF THE PARTIES

- 5.01 **Mutual Indemnification.** Notwithstanding any provisions of the Business Arrangements to the contrary, and unless otherwise limited as set forth in this BAA, each Party (the "Indemnifying Party") agrees to indemnify and hold harmless the other Party (the "Indemnified Party") and on written request of the Indemnified Party, defend the Indemnified Party, from and against any and all actual and direct losses, claims, actions, demands, liabilities, damages, costs and expenses incurred by the Indemnified Party (including costs of judgments, settlements, court costs and reasonable attorneys' fees) (collectively, "Information Disclosure Claims") to the extent arising from a third party claim and that are solely the result of any: (i) material breach of the obligations of the Indemnifying Party under this BAA or the HIPAA Regulations; (ii) breach or inaccuracy of any



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Franklin, Tennessee 37067

representation or warranty of the Indemnifying Party under this BAA; or (iii) gross negligence or intentional misconduct of the Indemnifying Party with respect to Protected Health Information. Notwithstanding the foregoing, the indemnification obligations of the Indemnifying Party under this section are conditioned upon the Indemnified Party (a) giving prompt written notice of the Information Disclosure Claims to the Indemnifying Party; (b) granting sole control of the defense or settlement of the Information Disclosure Claims to the Indemnifying Party (with any settlement subject to approval of the Indemnified Party, not to be unreasonably withheld); and (c) providing reasonable cooperation to the Indemnifying Party including, at the request and expense of the Indemnifying Party, assistance in the defense or settlement of the Information Disclosure Claims.

- 5.02 **Regulatory Amendment.** In the event any federal, state or local laws or regulations, applicable to Covered Entity (collectively "Regulatory Standards") are enacted, amended, withdrawn, repealed, or are interpreted by judicial tribunal, regulatory agency, or other body of competent jurisdiction, including without limitation the U.S. Department of Health and Human Services, in such a manner as to indicate that any provision of this BAA violates those Regulatory Standards, then the Parties agree within sixty (60) days prior to the effective date of such change to such Regulatory Standards to attempt to negotiate mutual agreements between themselves to amend this BAA so as to comply with the applicable Regulatory Standards and, to the maximum extent possible, to preserve the relationship intended by this BAA. In the event the Parties are unable to reach an agreement, to the satisfaction of Business Associate, by the effective date of the provision, Business Associate or Covered Entity may unilaterally terminate this BAA upon the effective date of the Regulatory Standards.
- 5.03 **Additional Health Information Exchange Services.** As health information capabilities continue to evolve, Business Associate may expand the types of health information exchange activities that it supports. Such expansion may expand Covered Entity's ability to Use or Disclose Protected Health Information with other licensees or customers of Business Associate. At least sixty (60) days prior to enabling a new type of health information exchange activity, Business Associate will provide advance written notice to Covered Entity of such new activity and permit Covered Entity to opt in to such exchange, subject to applicable terms and conditions."



# MIDDLE DISTRICT OF TENNESSEE

## Claims Register

[3:18-bk-05665 Curae Health Inc.](#)

**Judge:** Charles M Walker      **Chapter:** 11

**Office:** Nashville      **Last Date to file claims:** 01/21/2019

**Trustee:**      **Last Date to file (Govt):**

<i>Creditor:</i> (6804859)	<b>Claim No:</b> 140	<i>Status:</i>
MEDHOST Cloud Services, Inc.	<i>Original Filed</i>	<i>Filed by:</i> CR
c/o Thomas H. Forrester	<i>Date:</i> 12/14/2018	<i>Entered by:</i> THOMAS H.
150 Third Ave S, Suite 1700	<i>Original Entered</i>	FORRESTER
Nashville, TN 37201	<i>Date:</i> 12/14/2018	<i>Modified:</i>

Amount claimed: \$236626.53

*History:*

[Details](#)   [140-1](#)   12/14/2018 Claim #140 filed by MEDHOST Cloud Services, Inc., Amount claimed: \$236626.53 (FORRESTER, THOMAS )

*Description:* (140-1) Master Products and Services Agreement

*Remarks:*

## Claims Register Summary

**Case Name:** Curae Health Inc.

**Case Number:** 3:18-bk-05665

**Chapter:** 11

**Date Filed:** 08/24/2018

**Total Number Of Claims:** 1

<b>Total Amount Claimed*</b>	\$236626.53
<b>Total Amount Allowed*</b>	

\*Includes general unsecured claims

**The values are reflective of the data entered. Always refer to claim documents for actual amounts.**

	Claimed	Allowed
Secured		
Priority		
Administrative		