

BY SIGNING THE CRADLEMRX SERVICE ORDER FORM AGREEMENT, YOU ALSO AGREE WITH AND ACCEPT “CRADLEMRX TERMS AND CONDITIONS FORM MRX-103111-US”. Unless otherwise agreed in writing with Cradle, your Service Order Form Agreement (“SOFA”) with Cradle will always include, at a minimum, the Terms and Conditions set out in this document. These Terms and Conditions, together with the SOFA, and any Terms included in either document by reference, form a legally binding Agreement between you and Cradle in relation to your use of the Services. It is important that you take the time to read them carefully. Collectively, this legal agreement is referred to below as the “Agreement”

**1) GENERAL SOFTWARE DESCRIPTION.**

CradleMRx Software (“Software”) is designed, maintained and provided to help Cradle Solution, Inc.’s healthcare service industry customers to perform billing, reporting, data basing, and other administrative tasks including those that require use and storage of private patient information. CradleMRx is provided on secure servers to ensure at least industry standard data protection and guarded access that meets or exceeds HIPAA requirements. There is no CradleMRx Software to install on your computer. Like Facebook or Gmail, CradleMRx is cloud-based, meaning the Software is on the Internet and easily accessed by you remotely and only from authorized IP addresses by verified users.

**2) LICENSE TO ACCESS.**

Access to use CradleMRx Software is provided on a per license basis.

- 2.1 Each License is non-exclusive, non-assignable, and for the sole purpose of enabling you to use and enjoy the benefit of the Services described in the SOFA and the Agreement.
- 2.2 The number of concurrently accessing users cannot exceed the number of CradleMRx licenses which you maintain. The more licenses Customer maintains, the more of Customer’s designated users who can simultaneously access and use the CradleMRx Software. Accordingly, the number of concurrently accessing users cannot exceed the number of CradleMRx licenses which Customer maintains.

**3) LICENSE PACKAGE.**

Each License Package consists of either a Single License (for one (1) User to access and use our Software at a time), or a Bulk License (for more than one (>1) user to access and use our Service simultaneously). Each license enables only 1 (one) User to access or use CradleMRx Software at a time. The CradleMRx Service Order Form Agreement (“SOFA”) specifies how many licenses are provided to you, and the cost per month for that license quantity (including tax where applicable). To receive the Service, customer commits to pay a one-time account setup fee (due upon setup) and also to pay the License Package maintenance fee (in monthly installments) for one year. Tax is included where applicable. Establishing a single CradleMRx Account in the name of Customer is prerequisite to any license provision by Cradle. The Setup Fee covers among other things the cost of establishing the Account.

- 3.1 Renewal: Services and obligations described in the Service Order Form Agreement automatically renew annually to provide seamless continuity of Service, unless such service is suspended or terminated as described herein.

**4) OWNERSHIP.**

4.1 We own the CradleMRx Software. We retain all rights in CradleMRx, Service, content, our name, trade names, logos, graphics, marks, intellectual property, and our programming code. This Agreement grants no ownership rights to you. No license is granted to you except as to use of the Software service as expressly stated herein for so long as you are a subscriber to the single license package or bulk license package in good standing. Our name, logo, and the product names associated with the service are our intellectual property and may not be used without our prior written consent.

4.1 Not Sold. The CradleMRx Software, any third party software, documentation, interfaces, content, fonts and any data accompanying this License in any form (collectively the “Software”) is licensed, not sold, to you by Cradle Solution, Inc. for use only under the terms of this License. Cradle and/or Cradle’s licensors, if any, retain ownership of the Cradle Software itself and reserve all rights not expressly granted to you. Cradle may revoke each license subject to the terms of this Agreement.

4.2 Restrictions on Use of the Service. Use, resale or exploitation of the service and/or our content except as expressly permitted in this Agreement is prohibited. You may not alter, resell or sublicense our Service or any part thereof. You agree not to reverse engineer our technology, programming code, Service or Software. You may not and you agree not to-- or to enable others to-- copy, decompile, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Software or any services provided by the Software, or any part thereof. You will not use or access the Service to: (i) build a competitive product or service, (ii) make or have made a product using similar ideas, features, functions or graphics of the Service, (iii) frame or mirror the service, (iv) make derivative works based upon the Service or our content, or (v) copy any features, functions or graphics of the Service or our content.

**5) PASSWORDS, ACCESS, DATA AND UPDATES.**

5.1 Passwords. You are responsible for all activities that occur under your User Accounts. You are responsible for maintaining the security and confidentiality of all usernames and passwords. You agree to notify us immediately of any unauthorized use of any username or password or account or any other known or suspected breach of security.

5.2 Data. “Data” means all information, data, or material provided, entered, or submitted by you in the course of utilizing the Service including that which is governed by HIPAA. You own and control your data during the contract Term.

5.3 Data Ownership. All Data submitted or entered by you while using Service, whether posted by Customer or by Users, will remain

the sole property of Customer or such Users to the fullest extent provided by law.

- 5.4 **Statistical Aggregation Data.** We may aggregate statistical data regarding use and functioning of our system by users, and such aggregated statistical data is our sole property. We only use your data to provide our service to you including customer service and technical support.
- 5.5 **Data Accuracy.** You are solely responsible for the accuracy quality, integrity, legality, reliability, appropriateness of and copyright permissions for all your Data.
- 5.6 **Facilities and Data Transfer.** All facilities used to store and process Customer Data will adhere to commercially reasonable security standards to protect data including PII and PHI against unauthorized disclosure, access, or use. We provide at least industry standard systems and procedures to ensure the security and confidentiality of your data. We reserve the right to modify our privacy and security policies from time to time in our business judgment and as we deem required for compliance with applicable law. Data is transferred between our server and you using a secure socket layer (SSL) channel protection.
- 5.7 **Location and Data Use.** Subject to the terms and conditions of this Agreement, you grant us a non-exclusive license to use, copy, store, transmit and display your data to the extent reasonably necessary to provide and maintain our service. You agree that we may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to information about your computer, system and application, software, and peripherals, that is gathered periodically to facilitate the provision and maintenance of Software, product support, and other Services to you (if any) related to the Software, and to verify compliance with the terms of this License. We may use this information to provide and improve our products and services. To enable our partners and third party developers, if any, to improve their software, hardware and services designed for use with our products or services, we may also provide any such partner or third party developer with a subset of diagnostic information that is relevant to that partner's or developer's Software, hardware and/or services. By using location-based services provided by or through Cradle, you agree and consent to Cradle and its partners', licensees' and third party developers' transmission, collection, maintenance, processing and use of your location data and queries to provide and improve such products and services.
- 5.8 **Data Protection.** We take commercially reasonable steps to protect your data from unauthorized view. We, including our contracted technicians and server providers, adhere to a commercially reasonable policy of data confidentiality for healthcare industry and patient data; we may view or access your data in the course of fulfilling our obligations to you including maintaining or providing the service, including technical and customer support. Data may be viewed only in compliance with the law.
- 5.9 **Data Location.** Cradle may store and process the data provided in the United States or any other country in which Cradle or its agents or independent service providers maintain facilities.
- 5.10 **Service Updates.** Cradle reserve the right to make commercially reasonable changes and updates to the functionality and/or documentation of the Service from time to time.

**6) CONFIDENTIALITY AND HIPAA.**

"Confidential Information" means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is Customer's Confidential Information. Data entered by Customer or by a User designated by Customer is Customer's confidential information, is subject to Health Insurance and Portability and Accountability Act ("HIPAA") privacy and security standards, and is also confidential information. Oral disclosure will also be deemed Confidential Information if it would reasonably be considered to be of a confidential nature or if it is confirmed at the time of disclosure to be confidential. Neither party will use the other party's Confidential Information except as reasonably required for the performance of this Agreement. Each party will hold in confidence the other party's Confidential Information by means that are no less restrictive than those used for its own confidential materials. Each party agrees not to disclose the other party's Confidential Information to anyone other than its employees or contractors who are bound by confidentiality obligations and who need to know the same to perform such party's obligations hereunder and only where such sharing complies with the law. The confidentiality obligations set forth in this Section will survive for two (2) years after the termination or expiration of this Agreement except where such confidentiality endures longer under the law. Confidentiality of matters regulated by HIPAA including but not limited to PHI remains confidential subject to the standards of HIPAA.

- 6.1 **HIPAA Compliance.** Cradle maintains records compliant with the HIPAA Security Rule to adhere to national standards to protect individuals' electronic personal health information that is created, received, used, or maintained by a covered entity, including appropriate administrative, physical and technical safeguards to ensure the confidentiality, integrity, and security of electronic protected health information ("Security Rule"). You agree that you comply with the Security Rule.
- 6.2 **Person or Entity Authentication.** Data cannot be entered, accessed, or saved by any User of your CradleMRx license without Cradle recording the User's Electronic Signature. Using Electronic Signature on file and password credentials associated therewith, the CradleMRx Service verifies that a "person or entity seeking access to electronic protected health information is the one claimed" in Compliance with 45 C.F.R. §164.312(d). Each submission or entry of data by any User of your CradleMRx license requires an electronic signature that attributes the entry to a specific person.
- 6.3 **Electronic Signature Application.** For HIPAA compliance and for security purposes you agree that prior to use of Service by any person in your control, or on your Account, that each such person signs and submits to Cradle a completed "Cradle Electronic

Signature Application” available at [www.cradlesolution.com/forms](http://www.cradlesolution.com/forms). Such Electronic Signature Application must be provided to Cradle in advance of any use by User of Software or Service. You agree to also maintain a copy of the Electronic Signature Application in your files.

- 6.4. Log Reports. Cradle guarantees that the Service records user log reports that identify the following with corresponding date and time: unique Service Users, IP addresses that access the Service, and Service User activity. CradleMRX complies with all HIPAA requirements.
- 6.5. Automatic Log-off. CradleMRx includes electronic procedures that terminate an electronic session after a predetermined time of inactivity in compliance with 45 C.F.R. §164.312(a)(2)(iii).
- 6.6. Audit Controls. Cradle uses hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic Protected Health Information in compliance with 45 C.F.R. §164.312(b).
- 6.7. Personnel Screening. We maintain appropriate personnel screening processes of our employees in compliance with (45 C.F.R. §164.308(a)(3)(ii)(B)). We make no warrantee related to, we are not responsible for, and we assume no duty to perform your (45 C.F.R. §164.308(a)(3)(ii)(B)) screening processes. You agree not to rely on our Service as a substitute for the performance of your own screening processes.
- 6.8. Further HIPPA Compliance Policies. Cradle takes additional steps to ensure compliance with HIPPA as relates to provision of the CradleMRx Service. This paragraph names several current policies and practices Cradle has in place as relates to the provision of CradleMRx Service. Statutory references are to the related Section from 45 C.F.R. We maintain policies and procedures to manage security violations in compliance with 164.308(a)(1)(i). We conduct vulnerability assessments in compliance with 164.308(a)(1)(ii)(A). We implement security measures to reduce risk of security breaches in compliance with 164.308(a)(1)(ii)(B). We provide a policy for worker sanctions for HIPAA policy violations in compliance with 164.308(a)(1)(ii)(C). We implement procedures to review system activity in compliance with 164.308(a)(1)(ii)(D). We have an identified security official responsible for policies and procedures. 164.308(a)(2). We have implemented policies and procedures to ensure appropriate PHI access in compliance with 164.308(a)(3)(i). We have policies and procedures to authorize access to PHI in compliance with 164.308(a)(4)(i). We have policies and procedures to separate PHI from other operations in compliance with 164.308(a)(4)(ii)(A). We have a security awareness training program for workers and managers in compliance with 164.308(a)(5)(i). We have Security Incident Procedures including policies and procedures to manage security incidents in compliance with 164.308(a)(6)(i). We have response and reporting procedures to mitigate and document security incidents. We have contingency plan emergency response policies and procedures in compliance with 164.308(a)(7)(i). We have data backup planning and procedures in compliance with 164.308(a)(7)(ii)(A). We have one or more disaster recovery plans including data recovery planning and procedures in compliance with 164.308(a)(7)(ii)(B). We have an Emergency Mode Operation Plan including Business continuity procedures in compliance with 164.308(a)(7)(ii)(C). We perform a periodic security evaluation in compliance with 164.308(a)(8). We sign Business Associate Contracts in writing in compliance with 164.308(b)(1) and 164.308(b)(4). We implement Facility Access Controls including Policies and procedures to limit access to systems and facilities in compliance with 164.310(a)(1). We have policies and procedures to specify workstation environment and use in compliance with 164.310(b). We have physical safeguards for workstation access in compliance with 164.310(c). We have policies and procedures to govern receipt and removal of hardware and media in compliance with 164.310(d)(1). We have policies and procedures to manage media and equipment disposal in compliance with 164.310(d)(2)(i). We have policies and procedures to remove PHI from media and equipment. 164.310(d)(2)(ii). Access controls including technical administrative policies and procedures to manage PHI access in compliance with 164.312(a)(1). We assign unique IDs to support tracking of unique Users in compliance with 164.312(a)(2)(i). Procedures to support emergency access in compliance with 164.312(a)(2)(ii). We have audit control procedures and mechanisms for monitoring system activity in compliance with 164.312(b). We have integrity policies and procedures to safeguard PHI unauthorized alteration in compliance with 164.312(c)(1). We have Integrity control procedures to verify identities in compliance with 164.312(d). We have measures to guard against unauthorized access to transmitted PHI in compliance with 164.312(e)(2)(i). Our policies and procedures are not solely restricted to this list.
- 6.9. We agree to sign a standard Business Associate Agreement at your written request. Ours is located at [www.cradlesolution.com/forms](http://www.cradlesolution.com/forms).

## 7) TERM AND TERMINATION.

- 7.1 Initial Term. The Initial Term commences on the “Effective Date” which is the day in which we provide you with a code to access the Service. We typically provide access to you the same day or otherwise the next business day after we have both signed the prerequisite Agreements. We will use commercially reasonable efforts to make the Service available to you the same day or next business day following receipt of your signature on all requisite forms and Agreements, and will inform you of Service access initiation for or within your Service Account in writing.
- 7.2 Early Termination: Your “Term” is the period of time for which you have agreed to maintain Service with us. Periods of suspension of Service do not count toward your Term. After your Term and without a contract extension, you will become a month-to-month customer which is usually at a higher rate than the contract rate.

The Early Termination Fee Is:

\$3,500.00 if termination occurs with more than 180 days remaining on your term;

\$2,500.00 if termination occurs between 31 - 180 days remaining on your term;

- 7.3 Suspension. Cradle, in its sole discretion, may suspend or terminate any or all of your accounts, usernames and passwords, permissions and licenses to use the Service and/or terminate this Agreement if Cradle concludes you materially breached this Agreement; there is no requisite period of time for cure. "Suspend" means any of the following: a) the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services or b) partial disabling of access such that the account is read-only.
- 7.4 Data Post Termination. In the event that this Agreement is terminated (for any reason), Cradle will, within 10 (ten) business days of receipt of written request, make available to you one backup of the Customer Data in Cradle's standard format. Customer agrees and acknowledges that Cradle has no obligation to retain and may delete Customer Data that remains in Cradle's possession or control more than 180 (one hundred eighty) days after termination.
- 8) **NOTICE.**
- 8.1 Notice. Cradle may give notice by means of electronic mail to your email address on record with Cradle, or to the e-mail address stated by you in this Agreement, or by written communication sent by first class mail or by courier service to your primary contact e-mail address stated in your account profile at the time of sending. Such notice will be deemed to have been given upon the expiration of 36 hours after mailing (if sent by first class mail) or sending by courier, or 12 hours after sending (if sent by email or fax), or, if earlier, when received. You may give notice to Cradle by email to notice@cradlesolution.com or fax Cradle at (713) 776-2812. A party may, by giving notice, change its applicable address, email, or other contact information by indicating the change in writing.
- 8.2 Notice Changes. By accepting this Agreement, you agree that we may notify you about changes to prices and/or Services by sending an e-mail message to your e-mail address on file with us or by publishing such notices from time to time on the informational pages of the www.cradlesolution.com site applicable to the Services.
- 9) **MISCELLANEOUS.**
- 9.1 Choice of Law; Jurisdiction. These Terms and Conditions and all Agreements incorporated by reference herein including the SOFA will be interpreted fairly in accordance with its terms, without any strict construction in favor of or against either party and in accordance with the laws of the State of Texas and applicable US federal law without regard to conflict of law principles.
- 9.2 Governing Law. These Terms and Conditions and all Agreements incorporated by reference herein including the SOFA are governed by Texas law. For any dispute arising out of or relating to this Agreement, the parties consent to personal jurisdiction in, and the exclusive venue of the courts in Harris County, Texas.
- 9.3 Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control such as hurricane, earthquake, act of terrorism, riot, natural disaster, act of war, asteroid impact, sun storm, explosion, volcanic eruption, tsunami, radiation or chemical release or explosion, labor condition, governmental action, denial of service cyber-attack, Internet disturbance, and so on.
- 9.4 Survival. The following provisions will survive expiration or termination of this Agreement: Customer's accrued financial obligations, the license to Customer Data to the extent reasonable for our discharge of post-termination obligations, and the following Sections and paragraphs: Definitions, Termination, Ownership, Restrictions on Use of the Service, Indemnification, Warranties and Disclaimers, Limitation of Liability, Confidentiality and HIPAA, Payment, Return of Customer Data, Survival, Notice, Jurisdiction, Choice of Law Venue, and Miscellaneous.
- 9.5. Case. Words that are entirely uppercase or lowercase shall have identical meaning.
10. **PAYMENT**
- 10.1 **Payment:** Your application for Service is subject to our discretionary approval. All payments due are in U.S. dollars unless otherwise indicated in the CradleMRx Subscription and License Package Agreement.
- 10.2 **Payment Obligations:** You agree to pay Cradle the non-refundable Setup Fee & Monthly Fees including tax. We reserve the right to enact an annual fee increase. All set up and monthly recurring charges are billed in advance of the next billing cycle.
- 10.3 **Form of Payment:** We reserve the right to require payment by money order, cashier's check or other secure form of payment. If we take action to receive payment beyond invoicing you for charges for Service, you must pay our costs and expenses of collection, including attorneys' fees and expenses, the fees of any collection agency and court costs.
- 10.4 **Delinquent:** Acceptance of late or partial payments (even if marked "paid in full") does not waive our right to collect all amounts that you owe us and/or terminate Services. We may bill an additional charge to reinstate a suspended or terminated account. In addition to any other remedies under this Agreement, any sum not paid by you to us within thirty (30) days of the due date may bear interest at the rate four percent (4%) (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including

attorneys' fees) incurred by Cradle in collecting such delinquent amounts, except where such delinquent amounts are due to Cradle's billing inaccuracies.

- 10.5 **Invoice.** Company may elect to send a monthly invoice or other invoice stating fees for the Services, however Cradle is under no obligation to provide such invoice to you. Regardless of whether an invoice is sent from time to time or regularly, whether electronically, or by physical delivery, this very Agreement including any terms stated in the referenced URLs and the SOFA nonetheless fully notices you of your payment obligations, terms, and conditions including when payments are due and the amounts owed. Payment is considered delinquent thirty days after the date due. In the event of an increase, notice will be provided in at least one physical or electronic invoice, in or as part of a written notice to you.
- 10.6 **Taxes.** For certain purchases from us of goods or services, we are required to collect sales tax. Customer is responsible for any Taxes, and Customer will pay Cradle for the Services without any reduction for Taxes. If Cradle is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer or otherwise the amount will be indicated as "tax included". "Taxes" mean any duties, customs fees, or taxes (other than Cradle's income tax) associated with the sale of the Services, including any related governmentally imposed fees, penalties, or interest. In states or regions that impose sales or use tax, a purchase is subject to tax unless specifically exempt. Purchases are not exempt from sales or use taxes simply because they are made from the Internet or because we are not required to collect sales or use tax by any particular state or region. Whether any sales tax will be collected on a given purchase and the amount of tax charged depends on a number of factors including whether the seller is subject to tax in a given jurisdiction. The purchaser is responsible for any applicable taxes not collected by us and certain states require purchasers to file a sales/use tax return annually or quarterly reporting taxable purchases that were not taxed and to pay such tax. For details, see the website of, or otherwise contact, the applicable taxing authority. If any sales tax will be collected directly by us in connection with a purchase or payment, that amount will be shown either prior to the completion thereof, or reflected in the final confirmation of that purchase.

#### 11) SUSPENSION.

If Cradle becomes aware of a violation of the Agreement or an emergency security issue, then Cradle may specifically suspend your account or any of your access rights until the breach which caused the Suspension is cured. "Emergency Security Issue" means either: (a) Customer's use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other customer's use of the Services; or (iii) the Cradle network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

#### 12) CONFIDENTIAL INFORMATION.

- 12.1 **Obligations.** Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information, except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Cradle is not responsible for acts of independent contractors. Each party is responsible for any actions of its Affiliates, employees and agents in violation of this Section.
- 12.2 **Exceptions.** Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.
- 12.3 **Required Disclosure.** Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.
- 12.4 **Publicity.** Neither party may make any public statement regarding the relationship contemplated by this Agreement without the other party's prior written consent. Each party may recommend the services of the other to individual third parties seeking similar services by direct one-to-one communication, but not by online publication; and each party may serve as a business reference for the other party if asked by a third party, though there is no obligation to so serve.

#### 13) USE AND ADMINISTRATION.

- 13.1 **Acceptable Use Compliance.** Customer will use the Services in accordance with the Acceptable Use Policy found at [www.cradlesolution.com/acceptableuse](http://www.cradlesolution.com/acceptableuse).
- 13.2 **Customer Administration of the Services.** You are responsible to: (a) maintain the confidentiality of all passwords, user identifications, and account credentials; (b) designate those individuals who are authorized to access user accounts; and (c) ensure that all activities that occur in connection with your subscription comply with the Agreement.
- 13.3 **Access Consent.** You authorize Cradle and its technical and server provider(s), if any, to access, monitor, and use your data including PII and PHI to provide the Service, as well as to provide quality assurance, technical support, and customer support. To the extent permissible by law, you consent to such view by Cradle, and its technical and service providers, and you waive all claims arising out of any such viewing including that of PII and PHI; you agree to indemnify us for any claim arising out of any such

access, monitoring, or use of your data including PII and PHI.

- 13.4 Unauthorized Use. Customer will use commercially reasonable efforts to prevent unauthorized use of the Services, and to terminate any unauthorized use. Customer will promptly notify Cradle of any unauthorized use of, or access to, the Services of which it becomes aware.
- 13.5 Restrictions on Use. Unless Cradle specifically agrees in writing, you will not, and you will use commercially reasonable efforts to make sure a third party does not:
- (a) sell, resell, sublicense, lease or the functional equivalent, the Services to a third party (unless expressly authorized in this Agreement);
  - (b) attempt to reverse engineer the Services or any component;
  - (c) attempt to create a substitute, derivative work, competitive product or service, or similar service through use of, or access to, Cradle's Service;
  - (d) use the Services for High Risk Activities;
  - (e) copy any features, functions or graphics of the service or our content;
  - (f) "frame" or "mirror" the service; or
  - (g) use the Services to store or transfer any Customer Data that is controlled for export under Export Control Laws.
- 13.6 Third Party Requests. Customer is responsible for responding to Third Party Requests. Cradle will, to the extent allowed by law and by the terms of the Third Party Request:
- (a) promptly notify Customer of its receipt of a Third Party Request;
  - (b) comply with Customer's reasonable requests regarding its efforts to oppose a Third Party Request; and
  - (c) provide Customer with the information or tools required for Customer to respond to the Third Party Request. Customer will first seek to obtain the information required to respond to the Third Party Request on its own, and will contact Cradle only if it cannot reasonably obtain such information. Third Party Request" means a request from a third party for records relating to a User's use of the Services. Third Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the User permitting the disclosure.

#### 14) INTELLECTUAL PROPERTY RIGHTS.

Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data, and Cradle owns all Intellectual Property Rights in the Services, and any brand features associated therewith. See also subject headed by the title, "Ownership".

#### 15) WARRANTIES AND DISCLAIMERS.

- 15.1 WARRANTIES OF REPRESENTATION. EACH PARTY REPRESENTS THAT IT HAS FULL POWER AND AUTHORITY TO ENTER INTO THE AGREEMENT. EACH PARTY WARRANTS THAT IT WILL COMPLY WITH ALL LAWS AND REGULATIONS APPLICABLE TO ITS PROVISION, OR USE, OF THE SERVICES, AS APPLICABLE (INCLUDING APPLICABLE SECURITY BREACH NOTIFICATION LAW).
- 15.2 NO OTHER WARRANTIES. THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICE AND OUR CONTENT ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CRADLE OR AN AUTHORIZED CRADLE REPRESENTATIVE SHALL CREATE A WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OR A CONSUMER, SO CERTAIN OF THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU. YOU ASSUME ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR YOUR PURPOSES. WE DO NOT WARRANT THAT USE OF THE SYSTEM WILL BE ERROR-FREE OR UNINTERRUPTED. WE ARE NOT RESPONSIBLE FOR SOFTWARE INSTALLED OR USED BY YOU FOR THE OPERATION OR PERFORMANCE OF THE INTERNET. OUR SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. AS WITH ANY PORTION OF CRADLE SERVICE OR WITH ANY OF THESE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES.
- 15.3 DISCLAIMERS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT; CRADLE WARRANTS THAT IT WILL PROVIDE THE SERVICES IN ACCORDANCE WITH THIS AGREEMENT. CRADLE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES. CRADLE STORES YOUR DATA AS ENTERED BY YOU AND IS NOT RESPONSIBLE FOR ENTRY OF YOUR DATA OR THE ACCURACY THEREOF. THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT OR ON URLS REFERENCED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY CRADLE.

**16) TERM**

- 16.1 Term. SOFA (“Service Order Form Agreement”) will remain in effect for the Term. The Initial Term is one year with payments due monthly for the amounts and on the date each month stated by Cradle on the SOFA. If payment is due on a day on in which all Federal offices are closed, such payment is due the very next business day.
- 16.2 Cradle will provide the Services to Customer during the Service Term.
- 16.3 Auto-Renewal. At the end of each Service Term including the Initial Term, the Services and all License Packages previously purchased will automatically renew for an additional Service Term of twelve (12) months by default. Customer will then be renewed and owe Cradle the then-current yearly fees in monthly installments just like the previous year, unless Customer and Cradle mutually agree otherwise or an increase is added subject to the terms of this Agreement. Customer may request to alter the number of licenses to be renewed by communicating the appropriate number of Licenses to be renewed to Cradle, however an alternation of license number may void this and any other Agreement between the parties, at the sole discretion of Cradle, whereupon the parties can then enter into one or more new Agreements that meet both parties expectations. If you or Cradle do not want the License Package to renew, then one party will provide the other party written notice to this effect at least 15 (fifteen) days prior to the end of the then current annual Service Term. This notice of non-renewal will be effective upon the conclusion of the then current Service Term.
- 16.4 Requesting User Accounts. Customer may request additional licenses to use CradleMRx by contacting Cradle. Additional fees may apply. A new Service Order Form, and/or a new CradleMRx Subscription and License Package Agreement may all need to be signed at the discretion of Cradle.
- 16.5 Revising Rates. Cradle may revise its rates for the following Service Term by providing you written notice (which may be by email) at least thirty days prior to the start of the following Service Term.

**17) TERMINATION**

- 17.1 Termination or Suspension for Breach. Cradle may suspend performance or terminate this Agreement if: (i) you are in material breach of the Agreement and you fail to cure that breach within 30 (thirty) days after receipt of written notice; (material breach includes instances of nonpayment, underpayment, and instances of payments past due by more than three business days; one or more licenses can be suspended or terminated for nonpayment at the sole discretion of Cradle); if (ii) either Party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety (90) days; or (iii) you are in material breach of this Agreement more than two times notwithstanding any cure of such breaches.
- 17.2 Effects of Termination. If this Agreement terminates, then: (i) the rights granted by one Party to the other will cease immediately (except as set forth in Section Miscellaneous); (ii) Data may be overwritten or destroyed; and (iii) upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party including PHI.

**18) INDEMNIFICATION.**

- 18.1 By Subscriber. You will indemnify, defend, and hold harmless Cradle from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of a third party claim: (i) regarding Customer Data or (ii) regarding Customer’s use of the Cradle’s public portions of its site(s) in violation of the Acceptable Use Policy stated by Cradle on such site.
- 18.2 By Cradle. We will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of a third party claim that Cradle’s technology used to provide the Services or infringe or misappropriate any patent, copyright, trade secret or trademark of such third party. Notwithstanding the foregoing, in no event shall we have any obligations or liability under this Section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by us, and (ii) any content, information or data provided by Customer or by other third parties.
- 18.3 General. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party’s prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. The indemnities above are a party’s only remedy under this Agreement for violation by the other party of a third party’s intellectual property rights.

**19) LIMITATION OF LIABILITY.**

- 19.1 LIMITATION OF LIABILITY. YOU EXPRESSLY UNDERSTAND AND AGREE THAT CRADLE, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU FOR: (A) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS; (B) ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF:  
(I) ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE SERVICES;

- (II) ANY CHANGES WHICH CRADLE MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES);
  - (III) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICES;
  - (IV) YOUR FAILURE TO PROVIDE CRADLE WITH ACCURATE ACCOUNT INFORMATION;
  - (V) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL;
- 19.2 THE LIMITATIONS ON CRADLE'S LIABILITY TO YOU EXPRESSED HEREIN SHALL APPLY WHETHER OR NOT CRADLE HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.
- 19.3 LIMITATION ON INDIRECT LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NO OWNER, PARTNER, MANAGER, MEMBER, OFFICER, DIRECTOR, SHAREHOLDER OR AGENT OF CRADLE OR OF CUSTOMER, SHALL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES, LOST DATA, LOST PROFITS, LOSS OF ECONOMIC ADVANTAGE, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.
- 19.4 LIMITATION ON AMOUNT OF LIABILITY. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
- 19.5 HARDWARE PROTECTION, SPYWARE PROTECTION, AND VIRUS PROTECTION ARE SOLELY THE RESPONSIBILITY OF CUSTOMER. CRADLE CANNOT BE HELD LIABLE OR RESPONSIBLE FOR PROBLEMS OR DAMAGE TO YOUR HARDWARE, AND/OR FOR DAMAGE ARISING OUT OF SPYWARE AND/OR VIRUS ON, OR RELATED TO, YOUR ELECTRONIC EQUIPMENT, COMPUTER, SOFTWARE, OR MEMORY CHIPS.
- 20) **MISCELLANEOUS.**
- 20.1 Authority: If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement.
  - 20.2 Compliance with Laws. Customer is responsible for ensuring its Users comply with the terms of Service. Service does not display data to the public and may not be accessed by children under 18 years of age. As such, Customer agrees that it is solely responsible for compliance with all laws and regulations that apply to Customer's provision of Service to Customer's End Users, such as the U.S. Family Educational Rights and Privacy Act of 1974 (FERPA), Children's Internet Protection Act (CIPA), and the Children's Online Privacy Protection Act of 1998 (COPPA).
  - 20.3 Assignment. This Agreement may not be assigned by you without our prior written approval but may be assigned by us without such assignment being considered a change to the Agreement, and without notice to you. We are then released from all liability. The assignee shall have the same rights and obligations as the assignor and shall agree in writing signed by the assignee to be bound by the terms and conditions of this Agreement. Any purported assignment in violation of this Section is void. This Agreement may be enforced by and is binding on permitted successors if any, and permitter assignees if any.
  - 20.4 No Waiver. Failure to enforce any provision of Agreement will not constitute a waiver unless acknowledged and agreed to by us in writing.
  - 20.5 Severability. If any provision of Agreement is found unenforceable, the balance of Agreement will remain in full force and effect.
  - 20.6 No Agency. The parties are independent contractors, and Agreement does not create an agency, partnership, joint venture, or employer-employee relationship.
  - 20.7 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
  - 20.8 Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.
  - 20.9 Amendments. Any amendment must be in writing and expressly state that it is amending Agreement.
  - 20.10 Entire Agreement. This Agreement, and all documents referenced herein, collectively, "CRADLEMRX TERMS AND CONDITIONS (FORM MRX-103111-US)", are the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms located at each URL and SOFA referenced in this Agreement are hereby incorporated by this very reference.
  - 20.11 Interpretation of Conflicting Terms. If there is a conflict between terms or conditions of this Agreement, the documents will control in the following order: Acceptable Use Terms located in any URL named herein, any other URL named herein, then this XTC, then SOFA, then any other documents referenced herein.
  - 20.12 Plural and Singular. Words in the singular number include the plural, and those in the plural include the singular.
  - 20.13 Counterparts. The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.
- 20) **PARTY IDENTIFICATION TERMS.**
- 21.1 Each Party Identification Term ("PIT") identifies a particular Party, when such PIT is used in the CradleMRx Service Order Form or in any Document or Form that is incorporated by reference therein or herein provided the Parties to such CradleMRx Service Order Form are each respectively referenced in Section 23.2 (as us) and in Section 21.3 (as you).
  - 21.2 The lowercase or capital terms "us", "our", "we", "CS" "vendor", "Licensor", and "Cradle" means "Cradle Solution, Inc." or



otherwise refers to possession by the same entity, together with our affiliates, owners, assigns, and successors.  
22.3 The lowercase or capital terms “subscriber”, “Customer”, “licensee”, “vendee”, “you” and “your” mean or refer to the entity that either electronically or in writing agrees to the CRADLEMRX SERVICE ORDER FORM AGREEMENT (“SOFA”) with Cradle Solution, Inc. where such Form incorporates this very Form MRX-103111-US by reference, together with your affiliates, owners, assigns, and successors. “Your” means “you” in the possessive form.

21) DEFINITIONS.

- 22.1 “Acceptable Use Policy” means the acceptable use policy for the Services available at [www.cradlesolution.com/acceptableuse](http://www.cradlesolution.com/acceptableuse).
- 22.2. “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.
- 22.3. “Agreement” shall mean the Service Order Form Agreement signed by both Customer and Cradle together with all terms, conditions and/or policies incorporated by reference therein.
- 22.4. “Electronic Signature” means any electronic symbol, process, or sound attached to or logically associated with a contract or record and executed or adopted by a person with the intent to sign the record.
- 22.4 “Fees” means the amount owed by you to us for Services including but not limited to subscription, setup fee, taxes, and licenses as described in the CradleMRx Subscription and License Package Agreement. Customer agrees to pay fees stated in the Agreement.
- 22.5 “High Risk Activities” means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.
- 22.6 “Initial Service Term” means the term for the applicable Services beginning on the Service Commencement Date and continuing for twelve months.
- 22.7 “Intellectual Property Rights” means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.
- 22.8 “Notification Email Address” means the email address designated by Customer to receive email notifications from Cradle.
- 22.9 “Personally Identifiable Information” or “PII” means: (i) a combination of any information that identifies an individual with that individual’s sensitive and non-public financial, health or other data or attribute, such as a combination of the individual’s name, address, or phone number with the individual’s social security number or other government issued number, financial account number, date of birth, address, biometric data, mother’s maiden name, or other personally identifiable information; (ii) any “non-public personal information” as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, § 6809(4), and (iii) “protected health information” (“PHI”) as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103. You agree to use reasonable security precautions in light of your use of the Services including encrypting any PII and PHI transmitted to or from, or stored on our servers.
- 22.10 “Read-only” means you can access your account read what is in the account, but cannot save new data.
- 22.11 “Service” or “Services” means “CradleMRx”, our proprietary Internet-accessible medical billing and data processing Software. The Services include features which are described at <http://www.cradleMRx.com/Software-features/>. In more technical lingo, the service includes 1) permission to access one or more world wide web accessible servers that host our password protected proprietary database and server-side code named “CradleMRx”; and 2) limited license to use our CradleMRx Software to perform medical billing and data processing in compliance with HIPAA. “Services” is synonymous with “Standard Services”.
- 22.12 “Service Commencement Date” means the date upon which Cradle makes the Services available to Customer, and will be within one week of both parties signing SOFA or otherwise a reasonable time.
- 22.13. “Setup Date” means Service Commencement Date. The Setup Date is officially recorded by Cradle on the SOFA after both parties have signed the Agreement.
- 22.14 “Effective Date” means the latter of all acceptance signature dates stated on the SOFA.
- 22.15 “Term” means the Initial Service Term and all renewal terms for the applicable Service. Synonymous with “Service Term”, Term continues from the Effective Date until the earlier of (i) the end of the last Service Term or (ii) the Agreement is terminated as set forth herein.
- 22.16 “User” means you or any individual you permit to use the Services.

**Licensor:** Abiodun Kutemi on behalf of  
Cradle Solution Inc  
16000 Park Ten Place Suite # 501  
Houston, TX 77084  
Tel (713) 776 8510 Fax (713) 776 2812

**Licensee:**  
  
Tel: Fax:

**Signature:** -----

**Signature:** -----

**Initial:** \_\_\_\_\_