

Standard Terms and Conditions

For accounts prior to 10/08/09, contact us. For Current accounts:

1. DEFINITIONS. (a) "Contract" shall mean the Customer's Order and these Standard Terms and Conditions; (b) "Customer" mean the customer identified in the Order; (c) "Initial Setup Fee" shall have the meaning set forth in the Order; (d) "Trial Period" shall have the meaning set forth in the Order; (e) "Initial Term" shall have the meaning set forth in the Order; (f) "Monthly Subscription" shall have the meaning set forth in the Order (g) "Order" shall mean the Customer's Quote/Order for Service; (h) "Overage Fee" shall have the meaning set forth in the Order; (i) "Provider" shall mean PhoneTree and (j) "Service" shall mean the Provider's PhoneTree service that delivers automated recorded telephone, SMS text and email messages.

2. SCOPE OF SERVICES. Provider will provide the Service to Customer in accordance with the provisions set forth herein.

3. RENEWAL. Following the expiration of the Initial Term or any one (1) year term subsequent to the Initial Term, this Contract shall automatically renew for additional one (1) year terms, provided, however, either party can elect not to renew this Contract by providing the other party with written notice of non-renewal not less than sixty (60) days prior to the end of the Initial Term or the then current term. Customer may terminate this Agreement during the Trial Period in accordance with Customer's Order. If Customer provides written notice in accordance with this provision and terminates this Contract, then Customer shall be responsible for any payments due, including but not limited to, the Initial Setup Fee, Monthly Subscription, and any applicable Overage Fee(s) through the end of the then current term.

4. CANCELLATION. This contract shall be automatically cancelled with no further obligation in the event that Customer executes a new contract with Provider for equivalent services. Customer may cancel this contract without cause at any time by notifying Provider in writing, paying in full any and all amounts due in accordance with this contract and services rendered, and by paying a Cancellation Fee equivalent to three (3) monthly payments of the contracted amount.

5. INITIAL SETUP FEE, MONTHLY SUBSCRIPTION AND OVERAGE FEE. The Monthly Subscription allows Customer to make the number of phone calls, SMS text messages and/or emails ("Contact Attempts") allowed per month as set forth above. If Customer makes more than the number of Contact Attempts allotted in Customer's Monthly Subscription, then Customer shall be charged the Overage Fee, for each additional Contact Attempt in accordance with their Contract. . There shall be no refund if Customer uses less than the contracted number of Contact Attempts, and any unused Contact Attempts shall not roll over to the next month. Customer agrees to pay Provider on the date hereof the Initial Setup Fee. Thereafter, Customer shall pay the Monthly Subscription on the first day of each month. In addition, Customer shall pay any applicable Overage Fee on the first day of the month following the month where Customer made more Contact Attempts than are included in Customer's Monthly Subscription. Any and all payments due in accordance with this Contract, including, but not limited to, the Initial Setup Fee, the Monthly Subscription, and any applicable Overage Fee, shall be paid as set forth above. Customer shall pay all applicable shipping charges, insurance charges and sales, use, value-added, personal property or similar taxes, other than Provider's income and corporate franchise taxes in connection with the Service (including, without limitation, reasonable expenses and attorney's fees incurred by Provider in connection with the payment of same). Customer may pre-pay any amounts due hereunder at any time without penalty.

Notwithstanding anything to the contrary in this Contract, Provider may increase the fees and charges assessed to the Customer under this Contract, including, but not limited to, the Monthly Subscription and Overage Fee, at any time during the term of this Contract, provided that Provider will give Customer at least sixty (60) days' prior written notice of any such increase. During this sixty (60) day period, Customer may elect to terminate this Contract by notifying Provider in writing, without further obligation to Provider beyond charges accrued prior to termination. Provider's failure to require performance in any instance or Provider's written waiver of any provision shall not waive any other breach of the same or any other provision. Customer acknowledges and agrees that its payment and other obligations under this Contract are absolute and unconditional and not subject to any abatement, reduction, setoff, defense, counterclaim, or recoupment due or alleged to be due as a result of any past or future claim that Customer may have against Provider.

6. LATE FEES. Provider may charge Customer interest on the outstanding balance of any fees, including, but not limited to, the Initial Setup Fee, the Monthly Subscription, and the Overage Fee, at a rate equal to 1.5% per month or the highest rate permitted by applicable law, whichever is lower. Customer will reimburse Provider for all reasonable costs incurred (including, without limitation, reasonable attorneys' fees) in collecting past due amounts owed by Customer. All payment obligations of Customer will survive the termination or expiration of this Contract.

7. USE. Customer shall use the Service in a careful and proper manner and shall comply with and conform to all national, state, municipal, police and other laws, ordinances and regulations in anywise relating to the use of the Service. Customer hereby grants Provider permission to broadcast Customer phone number data for the purpose of Caller Identification (Caller ID). Customer retains full responsibility for accuracy of data. Provider will make reasonable efforts to provide a data translator to extract patient data from a Standard Report(s) produced by the Customer's Practice Management System (CPMS) for appointment confirmation calls, which at a minimum must contain patient phone number but must also contain patient name, healthcare provider, location, appointment type, appointment time and date, practice name and email address if that information is to be incorporated into the patient message or used to filter, or otherwise qualify, a patient as eligible to receive appointment notification. Provider reserves the right to limit the number of unique translators for additional applications beyond appointment confirmation, recalls and collections that it provides to any practice at Provider's sole discretion. Customer shall be responsible for creating the required report(s) on a daily (or as needed) basis in electronic format (i.e.; a file) in accordance with directions provided by the CPMS supplier. The CPMS supplier may require set-up and/or payment of a fee from Customer at the CPMS supplier's sole discretion. While Provider is familiar with most popular CPMS systems and can often assist with this process, Provider makes no warranties with regards to Provider's ability to assist Customer in producing the CPMS file without Customer obtaining assistance from the CPMS supplier. Should, despite reasonable efforts of Customer, the CPMS supplier cause a delay in the initial use of the Service that exceeds one or more calendar months while assisting Customer in producing the required appointment confirmation report and which renders Customer unable to make calls using the Service, Customer may request a credit from Provider for any contracted amounts paid during any entire month(s) of non-service and the Contract expiration date shall be automatically extended by an equivalent number of month(s). Notwithstanding anything to the contrary contained in this Contract, should Provider be unable to provide a file translator within 30-days of receipt of a standard report file from the CPMS, this Contract shall immediately terminate and there shall be no further obligation by Provider to Customer. Upon termination, Customer shall return all equipment and software provided by Provider, and upon receipt, Provider shall refund all monies paid to Provider by Customer.

8. SOFTWARE. Customer acknowledges and agrees that certain software is incorporated into the Service (the "Software"), and that Customer has only been granted a limited, non-exclusive, license to use such Software in connection with the Service. All Software, and any modifications

or copies thereof, are proprietary and protected by copyright and/or trade secret law and no ownership rights are transferred by this Contract. Customer shall not modify, reverse engineer, disassemble, reverse assemble or reverse compile any Software or part thereof. All changes, modifications or improvements made or developed with regard to the Software by Provider shall remain the property of Provider. The Software may not be used by any party other than Customer.

9. INTERNET CONNECTION. Customer acknowledges and agrees that it is the Customer's responsibility to maintain a working, high-speed internet connection configured to allow free, secure exchange of information with Provider's servers for the Service to operate properly. The failure of Customer to obtain or maintain a working internet connection shall not relieve Customer from its obligations under this Contract.

10. WARRANTIES AND REPRESENTATIONS OF CUSTOMER. Customer warrants and represents to Provider (all such representations and warranties being continuing) that: (a) unless it is an individual, Customer is duly organized, validly existing and in good standing under the laws of the state of the jurisdiction of its incorporation or formation and is duly qualified and authorized to transact business in, and is in good standing under the laws of, each other state in which the Service will be used; (b) the execution and delivery of the Contract, and compliance by Customer with the terms of the Contract, (i) have been duly and legally authorized by all necessary action taken by Customer; and (ii) are not in contravention of, and will not result in a breach of, any of the terms of Customer's charter, by laws, articles of incorporation or other organizational documents or any loan agreements or indentures of Customer, or any other contract, agreement or instrument to which Customer is a party or under which it is bound; (c) the Contract, when executed by Customer and delivered to Provider, will constitute valid and legally binding obligations of Customer, enforceable against Customer in accordance with the terms thereof, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar applicable laws affecting creditors rights generally or the equitable principles or judicial decisions which may affect the remedies provided therein; however, none of such laws now in force and none of such judicial decisions will make the rights and remedies provided in the Contract, taken as a whole, inadequate for enforcing payment of the Monthly Subscription or applicable Overage Fee or the practical realization of the benefits intended to be afforded to Provider under the Contract; (d) there are no suits pending or threatened against Customer or any Guarantor which, if decided adversely, might materially adversely affect Customer's or Guarantor's financial condition, the value or utility of the Service, the rights intended to be afforded to Provider hereunder or under any guaranty or the ability of Customer or any Guarantor to perform its obligations under the Contract or any document delivered in connection with the Contract; (e) all information provided by Customer to Provider at any time in connection with the Contract is accurate and complete in all material respects; and (f) Customer's exact legal name as it appears on its charter or other organizational documents, including as to punctuation and capitalization, is as set forth in the heading of this Contract. If more than one customer is named in the Contract, the liability of each shall be joint and several.

11. NO WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, PROVIDER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REPECT TO THE SERVICE OR THE INTELLECTUAL PROPERTY OF THE SOFTWARE. PROVIDER DISCLAIMS ALL LIABILITY FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES THAT CUSTOMER MAY INCUR HEREUNDER.

12. INDEMNIFICATION. Customer will indemnify Provider against, any and all taxes, assessments, fees and other governmental charges paid or required to be paid by Provider, other than those measured by Provider's net income, in any way arising out of this Contract (including, without limitation, reasonable expenses and attorney's fees incurred by Provider in connection with the payment of same). Customer shall also indemnify, hold harmless and, if Provider requests, defend Provider against all Claims directly or indirectly arising out of or connected with the Service, this Contract, or any related document. "Claims" means all losses, liabilities, damages, penalties, expenses (including, without limitation, legal fees and costs), claims, actions and suits, whether in contract or in tort, whether caused by Provider's negligence or otherwise and whether based on a theory of strict liability of Provider or otherwise, including, but not limited to, matters regarding (a) the selection, purchase, acceptance, rejection, ownership, maintenance, use, condition, or operation of the Service; (b) any latent or other defects in Service, whether or not discoverable by Customer; (c) any claim of patent, trademark or copyright infringement; (d) Customer's non-compliance with any federal, state or local laws or regulations; or (e) the breach of this Contract or any related document. This indemnity will survive the termination of this Contract. Each party agrees that it will give the other prompt notice of the assertion of any such claim or the institution of any such action, suit or proceeding.

13. DEFAULT. Any of the following constitutes a Default by Customer hereunder: (a) Customer fails to pay the Initial Setup Fee, Monthly Subscription, or applicable Overage Fee or any other amount owed to Provider by the applicable due date; (b) Customer fails to perform or observe any other representation, warranty, covenant, condition or agreement under this Contract or any other agreement with Provider and fails to cure such breach within 10 days after notice thereof from Provider; (c) any representation or warranty made by Customer hereunder or in any other instrument provided to Provider by Customer proves to be incorrect in any material respect when made; (d) a proceeding under any bankruptcy, reorganization, arrangement of debts, insolvency or receivership law or assignment for benefit of creditors is filed by or against Customer; (e) Customer becomes insolvent or fails generally to pay its debts as they come due, or a bulk sale of Customer's inventory or assets has occurred or does occur; (f) Customer voluntarily or involuntarily dissolves or is dissolved, or terminates or is terminated; (g) Customer's financial condition changes such that in Provider's opinion, the credit risk of a transaction with Customer is increased; or (h) an institution revokes, refuses to honor, or refuses to renew or extend any letter of credit required by Provider hereunder.

14. REMEDIES. Notwithstanding anything to the contrary in this Contract, if a default occurs, Provider has the right to exercise any or all of the following remedies in Provider's sole discretion: (a) To declare the total value of the Monthly Subscription that would be paid under this Contract through the then current term immediately due and payable, without notice or demand to Customer. (b) To sue for and recover all fees, charges, or expenses, then accrued or thereafter accruing, under this Contract. (c) To terminate the Service, without demand or notice, without any court order or other process of law. Customer hereby waives any and all damages occasioned by such termination unless caused by Provider's gross negligence or willful misconduct. Any said termination shall not constitute a termination of this Contract unless Provider expressly so notifies Customer in writing. (d) To pursue any other remedy at law or in equity. Notwithstanding any said termination of the Service, or any other action which Provider may take, Customer shall be and remain liable for the full performance of all obligations on the part of Customer to be performed under this Contract. All such remedies are cumulative, and may be exercised concurrently or separately.

15. ASSIGNMENT. Customer shall not sell, transfer or assign any interest it has in this Contract or the Service without prior written consent in each instance of Provider. Provider may, without notice, sell transfer or assign its interest in this Contract, the Service or any Contract payments or other sums due hereunder. This Contract inures to the benefit of and is binding on successors or permitted assigns of the Provider and Customer.

16. PROVIDER'S EXPENSES. Customer shall pay Provider all costs and expenses, including reasonable attorneys' fees, incurred by Provider in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.

17. OWNERSHIP. The Service is, and shall at all times be and remain, the sole and exclusive property of Provider; and the Customer shall have no right, title or interest therein or thereto except as expressly set forth in this Contract.

18. OFFSET. Customer hereby waives any and all existing and future claims, and offsets, against any fees or other payments due hereunder and agrees to pay the fees, including the Monthly Subscription and any applicable Overage Fee and other amounts hereunder regardless of any offset or claim which may be asserted by Customer or on its behalf.

19. NON WAIVER. No covenant or condition of this Contract can be waived except by the written consent of Provider. Forbearance or indulgence by Provider in any regard whatsoever shall not constitute a waiver of the covenant or, condition to be performed by Customer to which the same may apply, and, until complete performance by Customer of said covenant or condition, Provider shall be entitled to invoke any remedy available to Provider under this Contract or by law or in equity despite said forbearance or indulgence.

20. ENTIRE AGREEMENT. This Contract (including the Order and these Terms and Conditions) constitutes the entire agreement between Provider and Customer with respect to its subject matter and it shall not be amended except as provided in this Section. This Contract may be amended in a writing signed by Provider and Customer. Provider may also amend this Contract by posting amended Terms and Conditions on Provider's website. Any such amendments to these Terms and Conditions shall be deemed effective and binding upon Customer automatically upon the earlier of (i) the tenth (10) business day after such posting by Provider or (ii) Customer's first use of the Service after such posting by Provider. All prior discussions, communications and writings are merged into this Contract.

21. NOTICES. All notices hereunder shall be effective upon the earlier of receipt or three (3) days after being sent by a reputable overnight delivery service or certified U.S. mail, return receipt requested. All notices shall be addressed to a party at its address shown on the Order/Quote page of this Contract or at any other address such party specifies in writing.

22. CAPTIONS, CONSTRUCTION, CHOICE OF LAW, NON-JURY TRIAL. Any captions herein are for convenience only and do not alter the text. The provisions of the Contract are severable and the remainder shall not be affected if any provision is held unenforceable, invalid or illegal. If any provision hereunder is deemed unenforceable, invalid or illegal, the parties agree that such provision shall be enforced to the maximum extent possible so as to provide the principal benefit of such provision to the applicable party. In the event that any amounts due hereunder are deemed to constitute interest, then regardless of any provision of this Contract to the contrary and without waiving any claim or defense to the contrary, no such amount contracted for, enlarged or collected shall exceed the highest lawful rate of interest ("Highest Lawful Rate"). In the event that Provider ever collects, or applies, as interest any such amounts in excess of the Highest Lawful Rate, such amounts shall be deemed a prepayment of such portion of amounts due hereunder as are deemed to constitute principal, and if all amounts so deemed to constitute principal have been or are thereby paid in full, any remaining excess shall immediately be refunded to Customer. In determining whether or not amounts deemed to constitute interest contracted for, charged or collected exceed the Highest Lawful Rate, to the maximum extent permitted by law (a) amounts due hereunder shall be characterized as principal or as a non-usurious expense, fee or premium rather than interest; and (b) all amounts deemed to constitute interest shall be amortized, prorated, allocated and spread in equal parts throughout the entire term of this Contract so that the interest rate is uniform throughout the term. The Contract was entered into by and between the parties in the State of North Carolina, shall be performed in the State of North Carolina, and shall be governed by the internal laws (as opposed to conflicts of law provisions) and decisions of the State of North Carolina. CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY SO THAT TRIAL SHALL BE BY AND ONLY TO THE COURT.

23. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE IN DEFAULT BY REASON OF ANY FAILURE IN PERFORMANCE OF THIS CONTRACT, IF SUCH FAILURE ARISES, DIRECTLY OR INDIRECTLY, OUT OF CAUSES REASONABLY BEYOND THE DIRECT CONTROL OR FORESEEABILITY OF SUCH PARTY, INCLUDING BUT NOT LIMITED TO, DEFAULT BY SUBCONTRACTORS OR SUPPLIERS, ACTS OF GOD OR OF A PUBLIC ENEMY, ACTS OF TERRORISM, UNITED STATES OR FOREIGN GOVERNMENTAL ACTS IN EITHER A SOVEREIGN OR CONTRACTUAL CAPACITY, LABOR, FIRE, FLOOD, EPIDEMIC, RESTRICTIONS, STRIKES, AND/OR FREIGHT EMBARGOES, PROVIDED, HOWEVER, THAT IF SUCH DEFAULT OR FAILURE TO PERFORM CONTINUES FOR A PERIOD EXCEEDING NINETY (90) DAYS, THE OTHER PARTY SHALL HAVE THE RIGHT TO TERMINATE THIS CONTRACT UPON WRITTEN NOTICE TO THE DEFAULTING PARTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS CONTRACT, PROVIDER'S TOTAL CUMULATIVE LIABILITY UNDER THIS CONTRACT WITH RESPECT TO ANY SOFTWARE, SERVICE, OR SERVICES DELIVERED HEREUNDER WILL BE LIMITED TO TWENTY PERCENT (20%) OF THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CUSTOMER TO PROVIDER HEREUNDER. IN NO EVENT WILL PROVIDER BE LIABLE TO CUSTOMER UNDER, IN CONNECTION WITH, OR RELATED TO THIS CONTRACT OR ANY RELATED DOCUMENT FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING PROVISION IS A CONDITION AND MATERIAL CONSIDERATION FOR THEIR ENTRY INTO THIS CONTRACT.

24. CREDIT INFORMATION. CUSTOMER HEREBY AUTHORIZES PROVIDER OR ANY AGENT OF PROVIDER TO OBTAIN CREDIT BUREAU REPORTS AND MAKE OTHER CREDIT INQUIRIES AS PROVIDER DEEMS NECESSARY. ON WRITTEN REQUEST, PROVIDER WILL INFORM CUSTOMER WHETHER PROVIDER REQUESTED A CONSUMER CREDIT REPORT AND THE NAME AND ADDRESS OF ANY CONSUMER CREDIT REPORTING AGENCY THAT FURNISHED A REPORT. WITHOUT FURTHER NOTICE TO CUSTOMER, PROVIDER MAY USE OR REQUEST SUBSEQUENT CREDIT BUREAU REPORTS TO UPDATE ITS INFORMATION OR IN CONNECTION WITH A RENEWAL OR EXTENSION OF CUSTOMER'S REQUEST FOR PROVIDER'S SERVICES OR PRODUCTS.

25. LIMITATION ON CLAIMS; FORUM. Any action of any kind arising out of or in any way connected with this Contract or any related document, other than collection of outstanding payment obligations of Customer (including, without limitation, any indemnity obligations of Customer), must be commenced within one (1) year of the date upon which the cause of action accrued or the party becomes aware of the claim. If legal action is commenced by either party to enforce or defend its rights under this Contract, such action shall be brought only in a court located in Forsyth County, North Carolina, and the parties agree to submit to the jurisdiction of such courts.

26. AUTHORIZATION. Each party represents and warrants that this Contract is executed by its duly authorized representative. Each party

represents and warrants that the legal name of each party as set forth in this Contract is true and correct as of the date hereof. Each party acknowledges and agrees that an electronic signature shall have the same legal effect, validity or enforceability as a manually executed signature. Any party transmitting his signature by facsimile shall be deemed to have accepted and adopted such facsimile signature as such party's original signature and that same is sufficient to bind such party to this Contract as if such party's original handwritten signature is attached hereto.

27. CUSTOMER SUPPORT. Customer may contact Provider toll-free at 800-555-0559 for free telephone support related to the Service