TERMS OF USE

THIS IS A LEGAL AGREEMENT BETWEEN YOU, AS THE END USER, AND PHYTEL, INC. (HEREINAFTER "PHYTEL"). YOU SHOULD READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE CLICKING ON THE "I AGREE" BUTTON ON THE REGISTRATION WINDOW. BY CLICKING ON THE "I AGREE" BUTTON, YOU ARE CONSENTING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK THE "CANCEL" BUTTON.

UPON NOTICE PUBLISHED ON-LINE, PHYTEL MAY, AT PHYTEL' SOLE DISCRETION, MODIFY THESE TERMS AND CONDITIONS AT ANY TIME, AS WELL AS CHANGE OR DISCONTINUE THE PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER.

1.   Definitions

   A.   "Client" means any entity that has entered into a written agreement with Phytel for the license to use and access Phytel's patient management services (the "Client Agreement"), and that maintains a web site with a hyperlink ("Phytel® Connection") from which End User may access and use the Services.

   B.   "End User" means you, and any person, or entity, which gains access to the Services through Client from a hyperlink on a web site of Client, and has registered to use the Services.

   C.   "Phytel® Connection Database" means software licensed for use from Phytel to the Client to enable the functionality of the Products and Services for the Client.

   D.   "Phytel Material" means training and implementation materials provided to Client by Phytel, and any modifications and derivative works of and to such documentation.

   E.   "Products" means that certain software developed by and belonging to Phytel, the execution of which allows Client to provide access and use of the Services to the End User, and includes the Phytel® Connection and any modifications, enhancements, upgrades, point releases and derivative works of and to such software and all physical embodiments of same.

   F.   "Services" means the patient management services provided by Phytel and includes, without limitation, execution of the Phytel® Connection to perform any of the following: receive data input by the End User; retrieve data input by End User; display such data to End User in various forms and formats; and maintain End User information, including registration information such as a password.

2.   License. This agreement grants you a non-transferable, non-assignable, and non-exclusive license to use the Services provided by the Phytel Products via this web site that is accessible via the Phytel® Connection from Client's web site, subject to the terms and conditions of this agreement.

3.   Restrictions. You shall not attempt to or (A) access the Services in any manner other than via the Phytel® Connection from the Client's web site; (B) convey, without the prior written consent of Phytel, any information to any third party that would enable such third party to access or provide access to the Services, such information including without limitation any password and IP Address for accessing the Services; (C) sabotage, destroy, hinder, or alter in any way the Products or Services provided by Client or Phytel,; and (D) copy, revise, reverse engineer, decompile, or disassemble the Products in whole or in part or permit any third party to attempt to do the same. Violation of any of the restrictions set forth in this Section 3 by you shall result in immediate termination of the license granted in Section 2 above.

4.   Term. The license is effective until any of the following occur: (A) Phytel, at Phytel's sole discretion, terminates the license for any reason or no reason at all; (B) Phytel stops providing the Products and/or Services for any reason or no reason at all, (C) Client fails to maintain the Phytel® Connection on its web site, or (D) you fail to comply with any term or condition of this agreement, including Section 3 above. Upon the occurrence of any of these events, the license granted herein shall terminate immediately and with or without notice.

5.   Further Agreements**.** You acknowledge and agree that: (A) the Services are intended as a communication, documentation, and reporting tool, and in no way are they intended to provide diagnosis, medical practice, or prescribing guidelines, or protocols for delivering medical care; and (B) neither Phytel nor its employees, directors, officers, or shareholders have any responsibility as a result of this agreement for decisions made or actions taken or not taken in rendering medical care, or for information provided to patients or other caregivers.

6.   **NO WARRANTIES.**

IT IS HEREBY EXPRESSLY UNDERSTOOD BY YOU THAT PHYTEL IS PROVIDING SERVICES TO YOU "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, THAT MAY ARISE EITHER BY AGREEMENT BETWEEN THE PARTIES OR BY STATUTE OR OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NON-INFRINGEMENT, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, ELECTRONIC SECURITY OR FREEDOM FROM VIRUSES. THE SOFTWARE USED IN PROVIDING THE SERVICES (*I.E.*, THE PRODUCTS) IS ALGORITHMIC IN NATURE; IT MERELY PERFORMS MATHEMATICAL ANALYSIS ON DATA INPUT BY THE END USER AND/OR DATA QUERIED FROM CLIENT'S PHYTEL® CONNECTION DATABASE. THE PRODUCTS' AND/OR, SERVICES' OUTPUT AND THE QUALITY THEREOF, RELY ON THE CONTENT OF THE DATA INPUT TO IT, AND ARE NOT A SUBSTITUTE FOR THE PRACTICE OF MEDICINE, OR ANY OTHER FORM OF HUMAN DECISION MAKING. PHYTEL FURTHER MAKES NO WARRANTY AS TO THE PURPOSE FOR WHICH THE SERVICES MAY BE USED, OR SATISFACTION OF ANY USER WHO MAY RELY ON THE SERVICES, INCLUDING THE DATA OUTPUT BY THE PRODUCTS AND/OR SERVICES. YOU RELY ON THE SERVICES, INCLUDING DATA OUTPUT BY SUCH SERVICES, EXPRESSLY AT YOUR OWN RISK. PHYTEL IS NOT RESPONSIBLE FOR ANY NONPERFORMANCE OF ITS PRODUCTS OR SERVICES PROVIDED WHETHER CAUSED BY INOPERABILITY OF HARDWARE, OR FAILURE OF THE CLIENT OR END USER TO OPERATE HARDWARE OR THE SOFTWARE REQUIRED FOR THE SERVICES IN ACCORDANCE WITH APPLICABLE PHYTEL MATERIAL, FAULT OF THE PHYTEL® CONNECTION DATABASE AND/OR DATA CONTAINED THEREIN, OR FAULT OF PROGRAMMING OR OTHER ERROR BY PHYTEL OR BY ANY OTHER CAUSE WHATSOEVER.

7.   **NO LIABILITY FOR DAMAGES.**

IN NO EVENT SHALL PHYTEL BE LIABLE FOR ANY DAMAGES OR CLAIMS WHATSOEVER, INCLUDING ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES AS A RESULT OF YOUR USE OF THE SERVICES OR PHYTEL'S PERFORMANCE UNDER THIS AGREEMENT OR THE CLIENT AGREEMENT HOWSOEVER CAUSED, EVEN IF PHYTEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.   Title.

A.   Ownership of Proprietary Rights: All right, title and interest in and to all copyright, trade secret, patent, trademark (including, without limitation the trademark "Phytel®") and other proprietary rights in and to all software and documentation provided by Phytel to Client to perform the Services for the End User, including the Phytel Material, Products, and the Phytel® Connection Database software, as well as any further modifications, enhancements, upgrades, point releases and derivative works of and to such software and documentation and all physical embodiments of same shall at all times belong to, vest and remain vested in Phytel.

B.   Copyright: All design, text, technical drawings, configurations, graphics, other files, and their selection and arrangement ("Content"), are Copyright © 2010 Phytel, Inc. All rights reserved.

B.   Trademarks and Trade Names: Phytel® is a registered trademark of Phytel, and may not be copied, imitated, or used, in whole or in part, without the prior written permission of Phtyel. All page headers, custom graphics, button icons, and scripts are service marks, trademarks and/or trade dress of Phytel and

may not be copied, imitated, or used, in whole or in part, without the prior written consent of Phytel. No right is granted hereunder for you to use any service mark, trademark, and/or trade dress of Phytel.

9.   Privacy. Phytel maintains the security and confidentiality of Client's patient data to which it has access, and only uses such information in the ordinary course of business to carry out the purposes of the Client Agreement and in accordance therewith.

10.   Governing Law. This agreement shall be governed by the laws of the State of Texas notwithstanding any conflicts of law principles. All disputes hereunder shall be resolved in the applicable state or federal courts of Dallas County, Texas. You consent to the personal and exclusive jurisdiction of such courts and waive any jurisdictional or venue defenses otherwise available.

11.   Waiver. No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this agreement.

12.   Severability. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from this agreement.

13.   ENTIRE AGREEMENT.   **YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND PHYTEL AND SUPERSEDES ALL PREVIOUS AGREEMENTS, IF ANY, REGARDING END USER'S USE OF THE PHYTEL® CONNECTION, PRODUCTS AND/OR SERVICES PROVIDED THEREBY, WHETHER ORAL OR WRITTEN.**