

QUESTIONS?

Call: 781-270-4200
 select option 1
Email:
smostajo@healthbanks.com

CONTACT
information

PRACTICE NAME: _____

ADDRESS: _____ CONTACT: _____

FAX: _____

PHONE: _____ EMAIL: _____

SERVICE
preference

1 CHOOSE YOUR SPECIALTY

please check one

- | | |
|---|--|
| <input type="radio"/> Cardiology | <input type="radio"/> Psychiatry |
| <input type="radio"/> Gastroenterology | <input type="radio"/> Pulmonary |
| <input type="radio"/> General Practice | <input type="radio"/> Reproductive Endocrinology |
| <input type="radio"/> Oncology | <input type="radio"/> Urology |
| <input type="radio"/> Pediatric Endocrinology | |

2 OUR PRACTICE HAS

please check one

- | |
|--------------------------------------|
| <input type="radio"/> 1-3 Physicians |
| <input type="radio"/> 4-7 Physicians |
| <input type="radio"/> 8+ Physicians |

Includes a FREE supply of PROGRAM PROMO MATERIALS. Allow 3-4 weeks for delivery.

PAYMENT
information

PRICE PER MONTH: \$ _____ *(please contact us for pricing information)*

CARD TYPE: MasterCard Visa Amex
please circle

NAME ON CARD: _____

CREDIT CARD#: _____

EXP: _____ CARD CODE: _____

**located on the back of your card - last 3 digits on signature line*

CHARGE MY CARD: once annually every month
please circle

HEALTHBANKS
agreement and terms

- I HAVE READ THE ATTACHED HEALTHBANKS MEMBER AGREEMENT
VERSION 1.040605 AND AGREE TO ITS TERMS AND CONDITIONS.

Authorized "Member" Signature

Date

Printed Name

Title

SEND ME
information

- I WOULD LIKE MORE INFORMATION ON
please check all that apply:

- Buying my own URL (domain name)
 Linking my HealthBanks program to
my existing website
 Program Promotional Materials for patients
 Other _____

Sandra Mostajo
Account Executive

HealthBanks
25 Burlington Mall Road
4th Floor
Burlington, MA 01803

p 781 270 4200 x231
f 781 270 5803
smostajo@healthbanks.com

HEALTHBANKS MEMBER AGREEMENT

Version 1.040605

This Member Agreement (the "Agreement") is entered into by and between HealthBanks Inc. ("HealthBanks"), with a principal place of business at 25 Burlington Mall Road, Burlington, MA 01803 ("Member").

WHEREAS, HealthBanks is an Internet-based services company that provides connectivity and communication services for the on-line education of patients by providing on-line access to their physicians and healthcare information. HealthBanks provides to physicians ("Members") an internet-based service that allows the flow of healthcare information for the purpose of educating Members' patients through the HealthBanks Patient Education Network (the "Network") by way of HealthBanks' web site, www.healthbanks.com, and may, at a future date, allow for the communication between Members and Members' patients, and has authored or acquired rights in software and content used in providing the Network Services ; and

WHEREAS, Member wishes to make available to its patients who have authorized access and use of the Network and who have accepted the Terms of Use, as they may be from time to time amended, posted on the HealthBanks web site ("End-Users"), to access to the Network for itself and for the End-Users, and to obtain such other services as may be available to Member upon request hereunder.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS .

The following terms shall have the definitions set forth below for the purposes of this Agreement:

"Content" means the Core Content and the Modified Content.

"Core Content" means the data and information that constitute the comprehensive healthcare-related educational programs prepared or acquired by HealthBanks as part of the Network.

"Data" means the detailed reports produced by HealthBanks from the data and information collected through Member and certain End-User utilization of the Network Services, along with analysis thereof by HealthBanks.

"Modified Content" means the changes in the Core Content by HealthBanks at the request of a Member, including the tailoring of the Core Content by incorporating certain additional information from the Member ("Member Content"), or rearranging Core Content modules at a Member's request to reflect the Member's practice, and/or presentation directed to particular patient needs as described in Section 2b.

Other terms are defined in Sections where they appear.

2. HEALTHBANKS PATIENT EDUCATION NETWORK® SERVICES .

Subject to the terms and conditions set forth herein, the parties agree as follows:

- a. HealthBanks shall make available to the Member and End-Users the Network Services, including the Content, by way of HealthBanks' web site, "www.HealthBanks.com."
- b. The parties hereby agree that: (i) the Member may not alter the Core Content, but the Member may augment the Core Content, to include Member logos, photographs and descriptions of Member and its practices, videos, audio and limited text notations, and may upload content to create the Modified Core Content and (iii) HealthBanks may also provide Modified Content at a Member's request in conjunction with its Network Services and Core Content. The right to editorial and related Content control, including, without limitation, final approval of the Modified Content and any Member Content, resides solely with HealthBanks. Notwithstanding the foregoing, Member agrees that Member Content shall generally be of an educational nature such that the primary focus of the Member Content is the presentation of patient educational information.

- c. HealthBanks will issue passwords to Member ("Passwords") to enable it to access a web site to preview all Content included as part of the Network Services, to edit or upload Member Content, and to review Network Services periodically, at Member's discretion, throughout the term of this Agreement. Such Passwords shall be held in strict confidence by Member. HealthBanks, upon advanced written notification to Member, reserves the right to disable any Password upon its reasonable belief that the security with respect to that password or otherwise has been or will be compromised.
- d. HealthBanks will perform daily incremental backups and weekly full backups of all data and information received from Members and End-Users in connection with the Network Services. HealthBanks will store and maintain all data and information in connection with the Network Services in HealthBanks' electronic storage facilities from the date of receipt by HealthBanks until one hundred eighty (180) days after the termination of this Agreement, and in compliance with all applicable laws, rules and regulations, including but not limited to laws, rules and regulations relating to privacy of health information.
- e. HealthBanks may provide links from its web site to advertisers' designated pages, as well as such other links to advertisers' web sites. HealthBanks will post one or more disclaimers on its website clearly disclosing the fact that it is not endorsing or recommending advertisers' products or services and notifying the End-User that s/he is leaving the HealthBanks web site.
- f. HealthBanks may also provide additional opt-in services on the HealthBanks web site, such as surveys to End-Users. Participation is entirely voluntary; non-participation in these opt-in services will not affect End-Users' ability to use the Network Services.
- g. HealthBanks may periodically present to Member offers from third-party sponsoring organizations who may wish to pay Member's fee set forth in Section 4.a herein. Member may, in Member's discretion, accept or decline such offers. Declining such offers will not affect HealthBanks' or Member's respective rights and obligations under this Agreement.
- h. End-Users may opt-in to receive various other services or offers from HealthBanks and third parties, such as health newsletters. These services or offers are voluntary, and End-Users may discontinue participation at any time.

3. CONTENT .

- a. Subject to compliance with state and federal laws and regulations, and pursuant to this Section 3, HealthBanks shall develop and/or compile the Content.
- b. Member may request that HealthBanks modify the Core Content or provide HealthBanks with additional information, links or services to incorporate into the Core Content. HealthBanks will make every reasonable effort to incorporate such modifications and additional information into the Core Content at no additional cost to Member, subject to Sections 2b and 3c. If Member requests substantial additions which may be reasonably considered outside the scope of HealthBanks' contracted services, HealthBanks will provide an additional work estimate for Member's prior approval, and Member shall execute a Work Order authorizing such work. Member may upload information that annotates or augments the Core Content, but may not modify or delete any Core Content. Member may [switch off] portions of the Core Content that Member does not want Member's patients to access.
- c. HealthBanks may delete, replace or add any Modified Content in order to provide the types of data or information required to be in the Content or to otherwise improve the Network Services.
- d. HealthBanks may, but is not obligated to, conduct periodic Terms of Use audits of Member's use of the Content, and may audit Member's use in response to a complaint from an End-User or others. If HealthBanks becomes aware that a Member is knowingly and willfully using any Content inconsistent with the Terms of Use, HealthBanks shall immediately notify Member so the parties can determine an appropriate remedy, which may include (among other things) requesting Member to cease the inconsistent use or terminating such Member's rights with respect to the HealthBanks Network Services. HealthBanks may,

but is not obligated to, review Member Content and may delete any Member Content that HealthBanks, in its sole discretion, deems inappropriate for inclusion on the Network.

4. CHARGES / PAYMENTS .

- a. For the Network Services and access herein provided, Member shall pay to HealthBanks monthly fee as set forth in the Fee Schedule set forth in the Acknowledgement Page to which this Agreement is attached and incorporated by reference, which fee is due and payable on the first day of each month, in advance. Any fees generated pursuant to a Work Order shall be due and payable within ten (10) days of substantial completion of the work performed.
- b. Notwithstanding the termination of this Agreement, Member shall continue to be obligated to pay to HealthBanks all fees due for services rendered as set forth in this Agreement and the Work Orders that, as of the effective date of such termination, are validly due and payable to HealthBanks.
 - i. Early Termination Fee: Amount equal to two (2) months of service.
- c. In addition to the fees for the Network Services and Work Orders, Member agrees to pay HealthBanks for other services requested by Member in writing or purchased on line through HealthBanks and performed by HealthBanks, including, without limitation, special events, consulting, training, optional features and similar services outside the scope of this Agreement. All such amounts, including any applicable taxes related thereto (excluding payroll and similar taxes), shall be paid by Member within the time frames agreed pursuant to the Work Orders and consistent with applicable state and federal laws and regulations. If there is any inconsistency between a Work Order and this Agreement, the terms of this Agreement shall control.

5. LIMITATION OF LIABILITY FOR USE / MISUSE OF CONTENT .

- a. Except as otherwise set forth herein, HealthBanks cannot and does not assume any responsibility for Member's or any other third party's use or misuse of data, Content or information transmitted, monitored, stored or received using the Network Services and/or Data, which is outside the scope of this Agreement. Without limiting the generality of the foregoing, HealthBanks is not responsible for (i) the accuracy, reliability, timeliness, or completeness of the Member Content or Modified Content or any other data or information provided or received through the Network Services; or (ii) the results that may be obtained from the use of the Network Services. Notwithstanding the foregoing, HealthBanks shall maintain full responsibility for any revisions, changes, edits or other modifications it makes to any Content, including Modified Content.

6. REPRESENTATIONS AND WARRANTIES OF MEMBER .

- a. Member represents and warrants to HealthBanks that it will maintain the confidentiality of the Data and shall only disclose the Data as permitted in this Agreement.
- b. Member represents and warrants to HealthBanks that the use by HealthBanks of the Member Content as contemplated by this Agreement will not infringe on any valid and subsisting Intellectual Property Rights of any third party under the laws of the United States or any of its states. Member will defend, indemnify and hold HealthBanks and its affiliates, directors, officers, employees, consultants and agents (each, a "HealthBanks Indemnified Party") harmless from any and all loss, damage and expense, including reasonable attorney's fees, and amounts awarded by a court or paid in settlement arising from any claim that the Modified Content as provided to HealthBanks by Member or any portion thereof infringes any Intellectual Property Rights of any third party under the laws of the United States or any of its states, or the laws of any jurisdiction in which the Member Content is viewed. Such indemnification obligation shall not extend to any loss, damage or expense incurred in connection with the Member Content that is a result of HealthBanks' gross negligence or willful misconduct.
- c. Member warrants to HealthBanks that Member (and not HealthBanks) shall undertake sole responsibility to verify the accuracy, reliability, timeliness, and completeness of the Modified Content.

7. MUTUAL REPRESENTATIONS AND WARRANTIES .

- a. Each party represents and warrants to the other party that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any corporate charter or bylaws.
- b. Each party represents and warrants to the other party that the party is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any basis for the filing of an involuntary petition.
- c. Each party represents and warrants that its signatory hereto is authorized to execute this Agreement on such party's behalf.

8. LIMITATION OF LIABILITY .

- a. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, OR DATA, INCURRED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT OR BASED ON A WARRANTY, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BOTH PARTIES UNDERSTAND AND AGREE THAT THE FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES AND OTHER LIMITATIONS OF LIABILITY SET FORTH HEREIN.
- b. THE LIABILITY OF EITHER PARTY AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THIRD PARTY VENDORS FOR ANY LOSS OR DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER FORM OF ACTION, SHALL IN THE AGGREGATE NOT EXCEED THE LESSER OF THE ACTUAL DAMAGES OR THE AMOUNT OF FEES PAID OR VALIDLY DUE AND OWING BY MEMBER UNDER THIS AGREEMENT.
- c. No action arising out of this Agreement or the performance or nonperformance thereof may be brought more than two (2) years after it arises.
- d. Instances of either party's gross negligence or willful misconduct, indemnification obligations set forth in Section 6, and confidentiality obligations set forth in Section 11, are specifically excluded from the limitation of liability set forth in this Section 8.

9. TRADEMARKS ; PUBLICITY .

- a. Any use of the name or any trade name, trademark or service mark of HealthBanks or any of its affiliates by Member in any promotion, advertising or other similar materials or in any publicity or news releases shall be subject to the prior written approval of HealthBanks and its affiliates. Such written approval will not be unreasonably withheld by HealthBanks.
- b. Any use of the name or any trade name, trademark or service mark of Member by HealthBanks in any promotion, advertising or other similar materials or in any publicity or news releases shall be subject to the prior written approval of Member.

10. INTELLECTUAL PROPERTY .

- a. All proprietary rights in and to the Core Content and the Modified Core Content shall remain the property of HealthBanks or its licensors. Member shall not redistribute or sell the Core Content or the Modified Core Content in whole or in part, to any third party except with the prior written consent of HealthBanks and, then, only in accordance with the terms of this Agreement.

- b. HealthBanks retains all proprietary rights, title, and interest in data, information, and documentation related to utilization of the Network.
- c. Member shall not distribute or allow access to the Data to any third party except as authorized herein.
- d. HealthBanks retains all right, title and interest in its proprietary technology and its associated Intellectual Property Rights in connection with the operation and distribution of the Network Services.

11. CONFIDENTIALITY / HIPAA COMPLIANCE.

- a. The parties agree not to disclose the terms and conditions of this Agreement to third parties, unless both parties have approved and mutually agreed in writing to content, form, and forum of any such announcement.
- b. The parties agree to discharge their respective duties hereunder in accordance with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "Privacy Regulations" and the "Security Standards"). In the course of performing services pursuant to this Agreement, Member may wish to disclose certain information to HealthBanks, as a business associate (as defined in the Privacy Regulations), pursuant to the terms of the Member Agreement, some of which may constitute Protected Health Information ("PHI"). Therefore, HealthBanks and Member agree as follows:
 - i. **Contract Obligations.** HealthBanks agrees that it shall comply with the requirements under this Section 11.b at all times during the term of this Agreement and following the termination or expiration hereof.
 - ii. **Definitions.** Terms used in this Section 11.b but not otherwise defined shall have the meaning ascribed to them by the Privacy Regulations and the Security Standards, as amended from time to time.
 - iii. **Stated Purpose for which HealthBanks May Use or Disclose PHI.** Except as otherwise limited in this Agreement, HealthBanks may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Member as specified herein, provided that such use or disclosure would not violate the Privacy Rule if done by Member or the minimum necessary policies and procedures of Member.
 - iv. **HealthBanks Obligations.** HealthBanks covenants and agrees:
 - (a) Not to use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
 - (b) To implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Member and to use appropriate safeguards to prevent use or disclosure of PHI other than as herein provided for.
 - (c) To report in writing within five (5) business days to Member any use or disclosure of the PHI not herein provided for, or any security incident, of which it becomes aware.
 - (d) To ensure that any agent, including a subcontractor, to whom it provides PHI or electronic PHI received from, or created or received by HealthBanks on behalf of Member, agrees to the same restrictions and conditions that apply through this Section 11.b with respect to such information.
 - (e) To mitigate, to the extent practicable, any harmful effect that is known to HealthBanks of a use or disclosure of PHI by HealthBanks in violation of this Agreement.
 - (f) To make internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by HealthBanks on behalf of, Member available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of the Secretary determining Member's compliance with the Privacy Regulations and the Security Standards.
 - (g) To document such disclosures of PHI and information related to such disclosures as would be required for Member to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.
 - (h) To provide to Member or an individual, within ten (10) business days of a request by Member, information collected in accordance with Subsection iv(g), above, to permit Member to respond to a

request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

- v. **Member Obligations.** Member covenants and agrees:
 - (a) To provide HealthBanks with the notice of privacy practices that Member produces in accordance with 45 C.F.R. 164.520, as well as any changes to or limitations in such notice, to the extent that such change or limitation may affect BA's use or disclosure of PHI.
 - (b) To notify HealthBanks of any changes in, or revocation of, permission by individuals to use or disclose PHI, to the extent that such changes may affect HealthBanks' use or disclosure of PHI.
 - (c) To notify HealthBanks of any restriction to the use of disclosure of PHI that Member has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect HealthBanks' use or disclosure of PHI.
 - (d) Not to request HealthBanks to use or disclose PHI in any manner that would not be permissible under the Privacy Regulations if done by the Member.
- vi. **Permitted Uses and Disclosures by HealthBanks.** HealthBanks shall not use or disclose PHI in any manner, form, or in any means that is contrary to its obligations under this Agreement. Notwithstanding the foregoing, the parties agree that, pursuant to federal and Massachusetts state law, HealthBanks may:
 - (a) Except as otherwise limited in this Agreement, use PHI for the proper management and administration of HealthBanks or to carry out the legal responsibilities of HealthBanks.
 - (b) Except as otherwise limited in this Agreement, use PHI to provide Data Aggregation services to Member upon request by Member and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
 - (c) Except as otherwise limited in this Agreement, disclose PHI for the proper management and administration of HealthBanks, provided that disclosures are required bylaw, or HealthBanks, or HealthBanks obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required bylaw or for the purpose for which it was disclosed to the person, and the person notifies HealthBanks of any instances of which it is aware in which the confidentiality of the information has been breached.
- vii. **Return or Destruction of PHI.** Upon termination or expiration of this Agreement for any reason, HealthBanks shall return all PHI received from Member, or created or received by HealthBanks on behalf of Member. This provision shall apply to PHI that is in the possession of subcontractors or agents of HealthBanks. HealthBanks shall retain no copies of the PHI. In the event that HealthBanks determines that returning the PHI is infeasible, HealthBanks shall provide to Member notification of the conditions that make return infeasible. Upon determination by the HealthBanks that return of PHI is infeasible, HealthBanks shall extend the protections of this Section 11.b to such PHI and limit further uses and disclosure of such PHI to those purposes that make the return infeasible, for so long as HealthBanks maintains such PHI.
- viii. **Termination.** Notwithstanding the provisions of Section 12.b herein, upon Member's knowledge of a material breach by HealthBanks, Member shall provide an opportunity for HealthBanks to cure the breach or end the violation within fifteen (15) business days of being notified of such breach or violation. If cure is not feasible or not performed, Member may immediately terminate this Agreement. If neither cure nor termination is feasible, Member shall report the breach or violation to the Secretary of Health and Human Services.

12. TERM ; TERMINATION .

- a. The rights and obligations herein shall be effective on the Effective Date and shall continue in their entirety until terminated by one or both parties in accordance with the provisions of this Agreement (the "Term").
- b. Either party shall have the right to terminate this Agreement upon thirty (30) days written notice following the occurrence of an Event of Default (as defined in Section 13) by the other party.
- c. Upon the expiration or termination of this Agreement, in its entirety or as it relates to a particular Member, for any reason, other than termination by HealthBanks following an occurrence of an Event of Default by Member (except where Member has already paid for such Data), the Member will have

the right to continue to use the Data that it received prior to termination, in accordance with the terms of this Agreement.

- d. Either party shall have the right to terminate this Agreement without cause by providing the other party with sixty (60) days advance written notice of their intent to terminate. If Member terminates this with notice effective on a date that is less than one (1) year from the Effective Date, Member shall pay the termination fee set forth on the Fee Schedule.

13. EVENTS OF DEFAULT.

Each of the events set forth below shall constitute an "Event of Default" for the purposes of this Agreement:

- a. Member's failure to (i) pay any charges or fees set forth in this Agreement and the failure to pay has not been cured within thirty (30) days following Member's receipt of written notice from HealthBanks.
- b. A party's material breach of any term or provision of this Agreement that is not cured within thirty (30) days of receiving notice from the non-breaching party, which notice specifies such material breach and demands cure thereof.
- c. (i) A notice of a Member's failure to timely satisfy its obligations due in the ordinary course of business for a period longer than thirty (30) days; or (ii) an assignment by a party for the benefit of creditors; or (iii) the filing of a petition in bankruptcy by a party; or (iv) the filing of a petition in bankruptcy against a party by its creditors which petition is not dismissed within forty-five (45) days; or (v) the appointment of a receiver, trustee, liquidator, receiver-manager or similar custodian for a party and the appointment is not dismissed within forty-five (45) days; or (vi) a party has voluntarily authorized its dissolution, liquidation or winding up, by all necessary corporate and stockholder action, or has ceased to carry on its business in the ordinary course; or a court has ordered the involuntary dissolution and liquidation of a party; or (vii) the institution of any other proceeding involving the insolvency of either party or the protection of, or from, its creditors, which proceeding remains undismissed for a period of forty-five (45) consecutive days.

14. MISCELLANEOUS.

- a. Assignment. Except as otherwise set forth, neither party may assign this Agreement, and/or any of its rights and obligations hereunder, without the prior written consent of the other party. Notwithstanding, any assignment by operation of law, order of any court or pursuant to any plan of merger, consolidation or liquidation shall not be deemed an assignment for which prior written consent is required. Nothing herein shall prohibit HealthBanks from engaging independent contractors or contract personnel to perform its obligations under this Agreement, so long as HealthBanks remains liable for its obligations hereunder.
- b. No Inducement. This Agreement has been negotiated in good faith through arms length negotiations. Nothing contained in this Agreement, including any compensation paid or payable, is intended or shall be construed: (i) to require, influence or otherwise induce or solicit a party or any of its affiliates regarding referrals of business, or recommending the ordering of any items or services, of any kind whatsoever to any of the other parties or their Affiliates, or to any other person; or (ii) to interfere with a patient's right to choose his or her own health care provider, or with a physician's medical judgment regarding the ordering of any items or services.
- c. Notices. Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing (unless otherwise specifically provided herein) and shall be sufficiently given if: (i) sent by overnight guaranteed delivery service and addressed to the party's proper address as set forth below for Member or above for HealthBanks, or to such other address or addressee as either party may from time to time designate to the other by written notice. Any such notice or other communication shall be deemed to be given as of the date it is delivered to the recipient or, if delivered on a non-business day, on the next business day.

- d. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts without reference to the conflict of laws provisions thereof. The parties agree that any legal action regarding or related to this Agreement shall be brought before, and adjudicated by, the court of competent jurisdiction sitting in Massachusetts.
- e. Force Majeure. The performance of either party under this Agreement may be suspended to the extent and for the period of time that such party is prevented or delayed from fulfilling its obligations due to causes beyond its reasonable control (including, without limitations, acts of God, acts of civil or military authority including government priorities, new legislation or regulatory requirements, strikes or other labor disturbances, fires, floods, epidemics, wars or riots). After thirty (30) cumulative days of suspension on the part of one party, the other party may, at its sole discretion, terminate its obligations without further liability. In the event of a force majeure which prevents the delivery of the HealthBanks Patient Education Network Services entirely, the term of this Agreement shall be extended at no cost to the Member for a period equal to the duration of the delay to give the Member the full benefit of the fees paid, or, at the option of HealthBanks, Member shall receive a refund of fees paid.
- f. Modifications. No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon the parties hereto unless made in writing and duly signed by both parties. A failure or delay of either party to: (i) insist upon the performance of any terms or conditions of this Agreement; or (ii) exercise any rights or privileges conferred in this Agreement shall not be construed as waiving any such terms, conditions, rights or privileges and the same shall continue and remain in full force and effect.
- g. Severability. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.
- h. Entire Agreement. The terms and conditions of any and all Schedules and Exhibits and other attachments to this Agreement are incorporated herein by this reference and shall constitute part of this Agreement as if fully set forth herein. This Agreement constitutes the entire agreement between the parties and supersedes all previous or contemporaneous agreements, promises, representations, whether written or oral, between the parties with respect to the subject matter hereof.
- i. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It shall not be a condition to the effectiveness of this Agreement that each party shall have executed the same counterpart.
- j. Independent Contractors. The relationship of the parties shall be that of independent contractors. Any employee, servant, subcontractor or agent of HealthBanks who is assigned to provide services under this Agreement shall remain at all times under the exclusive direction and control of HealthBanks and shall not be deemed to be an employee, servant, subcontractor or agent of Member. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, or to represent the other party as agent, employee, or in any other capacity, except as specifically provided herein.
- k. Surviving Terms. The provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, and 14 and any other obligation under this Agreement which is to survive or be performed after termination of this Agreement shall survive the termination of this Agreement.
- l. Remedies Cumulative. Unless expressly stated, no remedy afforded to a party under this Agreement shall preclude other remedies available under equity or law.