

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
)	
PaymentsMD, LLC, a limited liability company.)	FILE NO. 132 3088
)	
)	
)	AGREEMENT CONTAINING CONSENT ORDER
)	

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of PaymentsMD, LLC (“PaymentsMD” or “proposed respondent”), a limited liability company. Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between PaymentsMD, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent PaymentsMD, LLC, is a Georgia limited liability company with its principal office or place of business at 5665 New Northside Dr., Suite 320, Atlanta, GA 30328.
2. Proposed respondent waives:
 - A. any further procedural steps;
 - B. the requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - C. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
3. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve

its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

4. Proposed respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.
5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
6. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Covered information" shall mean information from or about an individual consumer, including but not limited to (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver's license or other state-issued identification number; (g) a financial institution account number; (h) an insurance account number or other insurance information; (i) credit or debit card information; (j) credit report information; (k) a persistent identifier, such as a customer number held in a "cookie," a static Internet Protocol ("IP") address, a mobile device ID, or processor serial number; and (l) health information, as defined below.

2. “Health information” shall mean information about an individual consumer’s health or medical care, including but not limited to (a) an insurance account number or other insurance information; (b) prescription information; (c) medical records; (d) information concerning the consumer’s diagnoses or treatments; and (e) medical or health related purchases.
3. Unless otherwise specified, “respondent” shall mean PaymentsMD, LLC and its successors and assigns.
4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. “Clear(ly) and prominent(ly)” shall mean:
 - a. In textual communications (e.g., printed publications or words displayed on the screen of a computer or mobile device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;
 - b. In communications disseminated orally or through audible means (e.g., radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - c. In communications disseminated through video means (e.g., television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (a) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;
 - d. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (a) of this definition, in addition to any audio or video presentation of them; and
 - e. In all instances, the required disclosures: (1) are presented in an understandable language and syntax, and (2) include nothing contrary to, inconsistent with, or in mitigation of any statement contained within the disclosure or within any document linked to or referenced therein.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondent, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the extent to which respondent uses, maintains, and protects the privacy, confidentiality, security, or integrity of covered information collected from or about consumers, including but not limited to:

- A. Services for which consumers are being enrolled as part of any sign-up process;
- B. The extent to which respondent will share covered information with, or seek covered information from, third parties; and
- C. The purpose(s) for which covered information collected from third parties will be used.

II.

IT IS FURTHER ORDERED that respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondent, in or affecting commerce, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any service, shall:

- A. Separate and apart from any final “end user license agreement,” “privacy policy,” “terms of use” page, or similar document, clearly and prominently disclose to consumers respondent’s practices regarding the collection, use, storage, disclosure or sharing of health information prior to seeking authorization to collect health information from a third party; and
- B. Obtain affirmative express consent from consumers prior to collecting health information from a third party.

III.

IT IS FURTHER ORDERED that respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondent, in or affecting commerce, shall not use, collect or permit any third party to use or collect any covered information pursuant to any authorization obtained prior to the date of service of this order from consumers registering for the Patient Portal, except for the sole purpose of offering any health-related bill-payment or bill history services. Within sixty (60) days after the date of service of the order, respondent shall permanently delete or destroy all covered information in respondent’s possession or control that was collected pursuant to such authorization by or on behalf of respondent from any third party for any purpose except for the offering of any health-related bill-payment or bill history services

and shall provide a written statement to the Commission, sworn under penalty of perjury, confirming that all such information has been deleted or destroyed. Provided that, if respondent is prohibited from deleting or destroying such information by law, regulation, or court order, respondent shall provide a written statement to the Commission, sworn under penalty of perjury, identifying any information that has not been deleted or destroyed and the specific law, regulation, or court order that prohibits respondent from deleting or destroying such information. Unless otherwise directed by a representative of the Commission, all statements required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line *In the Matter of PaymentsMD, LLC*, FTC File No. 1323088. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

IV.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, for a period of five (5) years from the date of preparation or dissemination, whichever is later, a print or electronic copy of all documents relating to compliance with this order, including but not limited to:

- A. statements disseminated to consumers that describe the extent to which respondent maintains and protects the privacy, security and confidentiality of any covered information, including, but not limited to, any statement related to a change in any website or service controlled by respondent that relates to the privacy, security, and confidentiality of covered information, with all materials relied upon in making or disseminating such statements;
- B. all consumer complaints directed at respondent, or forwarded to respondent by a third party, that relate to the conduct prohibited by this order, and any responses to such complaints; and
- C. all forms, websites, and other methods used to obtain affirmative express consent to collect health information from third parties; and any documents, whether prepared by or on behalf of respondent, that contradict, qualify, or call into question compliance with this order.

V.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future subsidiaries, current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current subsidiaries and personnel within thirty (30) days after service of this order, and to such future subsidiaries and personnel within thirty (30) days after the person or subsidiary assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons or subsidiaries receiving a copy of the order pursuant to this Part.

VI.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the Matter of PaymentsMD, LLC*, FTC File No. 1323088. Provided, however, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

VII.

IT IS FURTHER ORDERED that respondent within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with

or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of July, 2014.

PAYMENTSMD, LLC

Dated: _____

By: _____
David Afshar, Secretary
PaymentsMD, LLC

Dated: _____

By: _____
Kristy Brown, Esq.
Alston & Bird LLP

FEDERAL TRADE COMMISSION

Dated: _____

By: _____
KEVIN H. MORIARTY
DAVID W. LINCICUM
JACQUELINE K. CONNOR
Counsel for the Federal Trade Commission

APPROVED:

MARK EICHORN
Assistant Director
Division of Privacy and Identity Protection

MANEESHA MITHAL
Associate Director
Division of Privacy and Identity Protection

JESSICA RICH
Director
Bureau of Consumer Protection