

## Medi Services and Software License Agreement

CalOptima, a California public agency, has contracted with Medi, Inc. to provide certain software and services to its Contracted Providers (Providers.) Said services include, but are not limited to financial transaction processing and the associated software and connectivity to effect such services (the Services.)

In accepting the Services, the Provider agrees:

1. That it will use the services only for itself and then only for transactions authorized by CalOptima.
2. That it will provide, maintain and make accessible the computer equipment and connectivity (e.g. telephone line, Internet connection) necessary to use the Services, at its own expense.
3. To the following terms and conditions.

### Medi Services and Software.

Medi grants Provider a license to use Medi's services and software. Accordingly, Provider will provide electronic data processing services from its business to Medi for processing at Medi's facilities. Medi will then forward the processed electronic data to CalOptima for processing. Medi, Inc. retains the ownership of any software licensed for use by Provider. Medi retains all rights not expressly granted.

Nothing in this agreement constitutes a waiver of Medi's rights under the U.S. copyright laws or any other Federal or State law. This agreement is made in, governed by and shall be construed in accordance with the Laws of the State of California. This agreement is not transferable.

### Disclaimers and Warranties.

THE MEDI.COM SERVICES AND SOFTWARE ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT REPRESENT OR WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SOFTWARE PRODUCTS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. COMPANY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE USE OF THE LICENSED MATERIALS IN TERMS OF THEIR CORRECTNESS, ACCURACY, ADEQUACY, USEFULNESS, TIMELINESS, OR RELIABILITY.

COMPANY WILL NOT BE LIABLE TO THE CLIENT OR ANY THIRD PARTY FOR ANY LOSS OF BUSINESS OR PROFITS, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT.

COMPANY WILL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR THE LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, OR SERVICE INTERRUPTION, NOR FOR THE ACCURACY, QUALITY OR NATURE OF INFORMATION OBTAINED THROUGH OR BY THE SOFTWARE PRODUCTS, NOR THE CONSEQUENCES ARISING FROM OR RELATED TO ANY VIRUSES UNKNOWINGLY TRANSMITTED THERETHROUGH.

### Confidentiality.

All data supplied by Provider to Medi shall remain the confidential property of Provider as stipulated in all applicable laws.

### ACCEPTED:

Medi

Provider

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Date: \_\_\_\_\_

## Client Information Sheet

**Please complete one sheet for each facility/location**

Name of Facility or Practice (Full legal) \_\_\_\_\_

Address (Physical location) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Completed By: \_\_\_\_\_ Title: \_\_\_\_\_

Address of "Pay To" (if different) \_\_\_\_\_

Main Phone \_\_\_\_\_ FAX Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

Contact/Title/Phone \_\_\_\_\_

Billing Dept Contact/Phone \_\_\_\_\_

Computer System Contact/Phone \_\_\_\_\_

Payee Tax ID # (s): \_\_\_\_\_

Medi-Cal ID#: \_\_\_\_\_

(If additional room is required, please attach separate sheet)

Estimated HCFA 1500 claims per month \_\_\_\_\_

Estimated UB92 claims per month \_\_\_\_\_

**For Assistance Call 888-334-6278 Ext 8018**

### SYSTEM & TELECOMMUNICATION INFORMATION

Name of Facility Billing software \_\_\_\_\_

Download file data format : ☐ ANSI 837 ☐ NSF ☐ Print Image

Network Operating System \_\_\_\_\_

Internet Service ☐ Yes ☐ No Browser \_\_\_\_\_

**For Assistance Call 888-334-6278 Ext 8018**

For Medi.com Use  
Only:

☐ CMWN ☐ K or ☐

# BUSINESS ASSOCIATE AGREEMENT

## "Customer" or "Covered Entity":

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: ( ) - \_\_\_\_\_  
Attention: \_\_\_\_\_  
Tax ID#: \_\_\_\_\_

## "Business Associate":

Each of the subsidiaries of WebMD Corporation, a Delaware corporation, listed on Exhibit A hereto as amended from time to time as provided herein, who has a relationship with Customer in which such entity creates or receives Protected Health Information (as defined below) for use in providing services or products to Customer.

Address: Medifax-EDI, LLC  
1283 Murfreesboro Road  
Nashville, TN 37217-2421

Attention: Legal Department

## RECITALS

**WHEREAS**, Business Associate now and in the future may have relationships with Customer in which Business Associate creates or receives Protected Health Information (as defined below) for use in providing services or products to Customer.

**WHEREAS**, Business Associate and Customer (each a "Party" and collectively the "Parties") desire to meet their obligations, to the extent applicable, under the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Regulation") and the Health Insurance Reform: Security Standards (the "Security Regulation") published by the U.S. Department of Health and Human Services ("HHS") at 45 C.F.R. parts 160 and 164 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and as may be applicable to the services rendered by Business Associate to the Customer, under the Gramm-Leach-Bliley Act ("GLB") and implementing regulations.

**WHEREAS**, the Parties desire to set forth the terms and conditions pursuant to which Protected Health Information that is provided by, or created or received by, the Business Associate on behalf of the Customer ("Protected Health Information"), will be handled between themselves and third parties.

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## TERMS AND CONDITIONS

### 1. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

1.1 Services. (a) Business Associate provides services (which may include transaction services as well as servicing hardware or software products) ("Services") that involve the use and/or disclosure of Protected Health Information. These Services are provided to Customer under various agreements ("Service Agreements") that specify the Services to be provided by Business Associate. Except as otherwise specified herein, the Business Associate may make any and all uses and disclosures of Protected Health Information created or received from or on behalf of Customer necessary to perform its obligations under the Service Agreements.

(b) Business Associate may perform Data Aggregation for the Health Care Operations of Customer.

1.2. Public Health Activities. Business Associate may use, analyze, and disclose the Protected Health Information in its possession for the public health activities and purposes set forth at 45 C.F.R. § 164.512(b)

1.3. Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may: (a) consistent with 45 C.F.R. § 164.504(e)(4), use and disclose the Protected Health Information in its

possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate; and

(b) de-identify any and all Protected Health Information in accordance with 45 C.F.R. § 164.514(b). Customer acknowledges and agrees that de-identified information is not Protected Health Information and that Business Associate may use such de-identified information for any lawful purpose.

### 2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

2.1. Responsibilities of the Business Associate. Business Associate agrees to: (a) use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law;

(b) report to the Customer any use and/or disclosure of the Protected Health Information of which Business Associate becomes aware that is not permitted or required by this Agreement;

(c) report to Customer any Security Incident of which it becomes aware with respect to Electronic Protected Health Information provided by, or created or received by, Business Associate on behalf of Customer ("Electronic Protected Health Information");

(d) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate not provided for by this Agreement;

(e) use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted or required by this Agreement;

(f) (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Customer; and (ii) make its policies and procedures, and documentation required by the Security Regulation relating to such safeguards, available to the Secretary of HHS for purposes of determining Customer's compliance with the Security Regulation;

(g) require all of its subcontractors and agents that receive, use or have access to Protected Health Information, to agree to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to the Business Associate;

(h) ensure that all of its subcontractors and agents to whom it provides Electronic Protected Health Information agree to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information;

(i) make available its internal practices, books and records relating to the use and/or disclosure of Protected Health Information to the Secretary of HHS for purposes of determining the Customer's compliance with the Privacy Regulation;

(j) within thirty (30) days of receiving a written request from Customer, make available information necessary for Customer to make an accounting of disclosures of an individual's Protected Health Information;

(k) within fifteen (15) days of receiving a written request from Customer, make available Protected Health Information necessary for Customer to respond to individuals' requests for access to Protected Health Information about them, to the extent that the Protected Health Information in Business Associate's possession constitutes a Designated Record Set; and

(l) within thirty (30) days of receiving a written request from Customer, incorporate any amendments or corrections to the Protected Health Information in accordance with the Privacy Regulation, to the extent that the Protected Health Information in Business Associate's possession constitutes a Designated Record Set.

**2.2. Responsibilities of the Customer.** (a) With regard to the use and/or disclosure of Protected Health Information by the Business Associate, the Customer agrees: (i) to obtain any consent, authorization or permission that may be required by the Privacy Regulation or any other applicable federal, state or local laws and/or regulations prior to furnishing Business Associate the Protected Health Information pertaining to an individual; and (ii) that it will not furnish Business Associate Protected Health Information that is subject to any arrangements permitted or required of the Covered Entity, including but not limited to, arrangements agreed to by Customer under 45 C.F.R. § 164.522 that may impact in any manner the use and/or disclosure of Protected Health Information by the Business Associate under this Agreement and the Service Agreement(s).

(b) Customer represents and warrants that its notice of privacy practices permits Customer to use and disclose Protected Health Information in the manner that Business Associate is authorized to use and disclose Protected Health Information under this Agreement.

### **3. TERM AND TERMINATION**

**3.1. Term.** Each term and condition of this Agreement shall become effective on the Effective Date, unless such term or condition relates to Electronic Protected Health Information only, in which event such term or condition shall become effective on the later of (a) the compliance date applicable to the Customer under the Security Regulation or (b) the date on which the Parties have executed the Agreement. This Agreement shall continue in effect unless terminated as provided in this Section 3, provided, that certain provisions and requirements of this Agreement shall survive the expiration or termination of this Agreement in accordance with Section 4.4 herein.

**3.2. Termination by the Customer.** As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Covered Entity may immediately terminate this Agreement with respect to a Business Associate and any related Service Agreement(s) if the Covered Entity makes the determination that such Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may choose to provide such Business Associate written notice of the breach in sufficient detail to enable Business Associate to understand the specific nature of the breach and afford Business Associate an opportunity to cure the breach; provided, however, that if such Business Associate fails to cure the breach within a reasonable time specified by Covered Entity, Covered Entity may terminate this Agreement with respect to such Business Associate and any related Service Agreement(s) to the extent that the Service Agreement(s) requires such Business Associate to create or receive Protected Health Information.

**3.3. Termination by Business Associate.** Any Business Associate may immediately terminate this Agreement with respect to such Business Associate and any related Service Agreement(s) if such Business Associate makes the determination that Covered Entity has breached a material term of this Agreement. Alternatively, such Business Associate may choose to provide Covered Entity written notice of the breach in sufficient detail to enable Covered Entity to understand the specific nature of the breach and afford Covered Entity an opportunity to cure the breach; provided, however, that if Covered Entity fails to cure the breach within a reasonable time specified by Business Associate, Business Associate may terminate this Agreement as it relates to such Business Associate and any Medifax mailing v.8/18/03 updated 08/16/04

related Service Agreement(s) to the extent that the Service Agreement(s) requires such Business Associate to create or receive Protected Health Information.

**3.4. Automatic Termination.** This Agreement will automatically terminate with respect to any Business Associate without any further action of the Parties upon the termination or expiration of all Service Agreement(s) between Customer and such Business Associate.

**3.5. Effect of Termination.** Upon the termination of this Agreement with respect to any one or more Business Associates, such Business Associate(s) agrees to return or destroy all Protected Health Information, including such information in possession of such Business Associate's subcontractors, if it is feasible to do so. If return or destruction of said Protected Health Information is not feasible, such Business Associate(s) will extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

### **4. MISCELLANEOUS**

**4.1. Entire Agreement.** This Agreement, and all attachments, schedules and exhibits hereto, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous written or oral memoranda, negotiations, arrangements, contracts or understandings of any nature or kind between the Parties with respect to the subject matter hereof.

**4.2. Change of Law.** Customer shall notify Business Associate within ninety (90) days of any amendment to any provision of HIPAA, or its implementing regulations set forth at 45 C.F.R. parts 160 through 164, which materially alters either Party's or the Parties' obligations under this Agreement. The Parties agree to negotiate in good faith mutually acceptable and appropriate amendment(s) to this Agreement to give effect to such revised obligations; provided, however, that if the Parties are unable to agree on mutually acceptable amendment(s) within ninety (90) days of the relevant change of law, either Party may terminate this Agreement consistent with sections 3.5 and 3.4.

**4.3. Construction of Terms.** The terms of this Agreement shall be construed in light of any interpretation and/or guidance on HIPAA, the Privacy Regulation and/or the Security Regulation issued by HHS from time to time.

**4.4. Survival.** Sections 3.5, 4.3, 4.8, 4.11, 5, 6 and this Section 4.4, and any other provisions of this Agreement that by their terms are intended to survive, shall survive the termination of this Agreement.

**4.5. Amendment; Waiver.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

**4.6. Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given above, and/or via facsimile to the facsimile telephone numbers listed above. Each Party may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

**4.7. Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

**4.8. Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

**4.9. Effective Date.** The Effective Date of this Agreement shall be the date on which the Parties have executed this Agreement.

4.10 Binding Agreement; New Parties; Agency.

(a) This Agreement shall be binding upon the Parties and their successors and permitted assigns. Any one or more additional subsidiaries of WebMD Corporation with a relationship with Customer in which such entity creates or receives Protected Health Information for use in providing services or products to Customer (each a "New Party") may join this Agreement as a Party and a Business Associate by executing and delivering a counterpart of this Agreement. In addition, WebMD Corporation from time to time lists on its corporate website its subsidiaries which are business associates for purposes of HIPAA compliance ("HIPAA BA Subs"). Each HIPAA BA Sub that creates or receives Protected Health Information for use in providing services or products to Customer shall be deemed to be a New Party without further action by any Party hereto. Whenever a New Party joins this Agreement, Exhibit A will be deemed amended (and shall be revised at the request of any Party or WebMD Corporation as agent for the Business Associates) to list such New Party as a Business Associate hereunder.

(b) The Parties acknowledge that WebMD Corporation is executing and delivering this Agreement solely in its capacity as agent for the Business Associates. By signing below, WebMD Corporation represents that it has been authorized to execute this Agreement on behalf of each Business Associate, including any New Party who joins this Agreement under Section 4.10(a).

4.11 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

4.12 Contradictory Terms. This Agreement hereby amends, modifies, supplements and is made part of the Service Agreement(s), provided that any provision of the Service Agreement(s), including all exhibits or other attachments thereto and all documents incorporated therein by reference, that is directly contradictory to one or more terms of this Agreement ("Contradictory Term") shall be superseded by the terms of this Agreement as of the date such terms become effective pursuant to Section 3.1, to the extent and only to the extent of the contradiction and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.

**5. LIMITATION OF LIABILITY**

**NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.**

**6. DEFINITIONS**

Regulatory citations in this Agreement are to the United States Code of Federal Regulations Title 45 parts 160 through 164, as interpreted and amended from time to time by HHS, for so long as such regulations are in effect. Unless otherwise specified in this Agreement, all capitalized terms not otherwise defined shall have the meaning established for purposes of Title 45 parts 160 through 164 of the United States Code of Federal Regulations, as amended from time to time.

IN WITNESS WHEREOF, each of the undersigned has caused this Business Associate Agreement to be duly executed effective as of the Effective Date.

**WEBMD CORPORATION**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CUSTOMER**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

Adaptive Health Systems of Arizona, Inc.  
Advanced Business Fulfillment, Inc.  
Benchmark Systems, Inc. of Louisiana  
CareInsite Corporation  
Claims Processing Service, Inc.  
Dakota Imaging, Inc.  
Dakota Imaging, S.A. (Sociedad Anonima)  
Envoy Corporation  
Envoy/ExpressBill, Inc.  
Healthcare Interchange, Inc.  
Illinois Medical Information Network, Inc.  
IMS-Net of Arkansas, Inc.  
IMS-Net of Central Florida, Inc.  
IMS-Net of Colorado, Inc.  
IMS-Net of Illinois, Inc.  
Kinetra LLC  
MedE America Corporation  
MedE America Corporation of Ohio  
Medi, Inc.  
Medical Manager Health Systems, Inc.  
Medical Manager PCN, Inc  
Medical Manager Research & Development  
Medical Manager Sales & Marketing  
Medifax-EDI, LLC  
MedWare Solutions, Inc.  
Minnesota Medical Communication Network, LLC  
National Electronic Information Corporation  
Peachtree Associates, Inc  
Personal Best!, Inc.  
Preferred System Solutions, Inc  
TouchPoint Software Corporation  
United Software Architects, Inc.  
ViPS, Inc.  
WebMD Clinical Services, LLC  
Wellmed, Inc.