



CUSTOMER SOFTWARE AGREEMENT

This Customer Software Agreement (“Agreement”) is entered into by and between CollaborateMD, Inc. (“CMD”) and the individual or legal business entity agreeing to the terms set forth herein (“Customer”). Customer will be more particularly identified in the signature section at the end of this Agreement, and during set-up in the information provided by Customer into CMD’s new account wizard. This Agreement will be in effect during any such time period that Customer has subscribed to and is using CMD’s services, until termination as set forth in Section 16 of this Agreement. CMD and Customer may be individually referred to as a “Party” and, collectively, the “Parties” in this Agreement.

Customer acknowledges its acceptance and execution of this Agreement by electronic means and agrees that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

Background

1. CMD is in the business of development, marketing, selling, and support of billing, invoicing and related software for the healthcare industry.
2. Customer is a practice management consultant, third-party medical billing company, medical practice, hospital, or other healthcare organization.
3. Customer desires to license and use CMD’s proprietary Internet-based software and to purchase certain services specified in this Agreement from CMD.

Agreement

1. License. In consideration to fees that may apply set forth herein, CMD grants Customer a personal, non-exclusive, non-transferable, revocable, license to use CMD’s proprietary computer software, and the related user documentation, which together comprise the “Licensed Software,” for the term set forth in Paragraph 16 below. Excluded from the Licensed Software is any separately identified third-party software or services that are not being licensed to Customer hereunder and that must be independently obtained by Customer. This agreement is a license to use only, and not a sale of the Licensed Software or any copy thereof.
2. Services. In addition to the Licensed Software, Customer is contracting for certain collateral and supplemental services, which may include, without limitation, transmittal of claims to providers or

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payers, electronic invoice remittance, patient eligibility verification, cci and lmrp claim scrubbing (validating & editing for correct code invoicing and local Medicare region policy), patient statement mailing, or such other services as CMD agrees to provide from time to time. The specific Services Customer shall receive shall be based upon Customer's type of business (medical practice, medical billing service, laboratory) and upon the Licensed Software plan or package selected by Customer, which selection shall be noted and confirmed in Customer's new client set-up and implementation paperwork/information.

3. Scope of Rights. Subject to the terms and limitations set forth in this Agreement, Customer may:
 - a. Install and use the Licensed Software on computer systems owned, leased, or otherwise controlled by Customer's own facilities.
 - b. Use the Licensed Software on Customer's computer systems for the sole purpose of serving the internal needs of Customer's business.
4. Prohibited Acts and Uses. Customer shall not:
 - a. Use, copy, distribute, publish, recast, translate, or modify the Licensed Software, or any copy, adaptation, transcription or merge portion thereof, except as expressly authorized by this Agreement and CMD;
 - b. Resell, donate, transfer, assign, rent or lease the Licensed Software, or any portions, derivations, or adaptations hereof, except to a successor-in-interest of Customer's entire business who assumes, in writing, the obligations of this Agreement;
 - c. Sublicense, engage in service bureau work or time-sharing arrangements, unless expressly authorized in writing by CMD;
 - d. Interfere with or disrupt the use of the Licensed Software and shall not attempt any unauthorized use or access to the Licensed Software; or
 - e. Use the Licensed Software for any purpose other than its intended commercial purpose as determined and stated by CMD from time to time.
5. Equipment and Third Party Software. The Licensed Software is designed for use on a computer meeting the specifications and requirements set forth on CMD's website, which specifications and requirements may be updated or modified by CMD from time to time.
6. Customer Responsibilities.
 - a. Customer is responsible for all business and operations activities occurring under its accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in

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connection with its use of the Licensed Software, including those related to data privacy, internal communications and the transmission of technical or personal data. Customer shall:

- i. Notify CMD immediately of any unauthorized use of any password or account or any other known breach of security affecting or relating to the Licensed Software.
 - ii. Restrict access and use of the Licensed Software by unauthorized users; and
 - iii. Not impersonate another user or customer or provide false identity information to gain access to or use of the Licensed Software or Service.
 - b. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and ownership rights of all Customer Data. CMD shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure of any Customer Data, regardless of the cause or reason therefor.
 - c. CMD may use during and after this agreement all aggregate non-identifiable information and data for purposes of enhancing the Service, technical support and other business purposes, all in compliance with the HIPAA Privacy Standards, including without limitation the limited data set and de-identification of information regulations.
7. Training and Implementation. CMD will provide training and implementation services for the Licensed Software in order to familiarize and help Customer operate the Licensed Software and utilize the Services. CMD will provide training services for the Licensed Software as described in our Training Agreement. CMD's Training Agreement is posted on CMD's website, and is available by clicking [HERE](#) and is incorporated herein by reference.
8. Product Support. CMD will provide product support for the Licensed Software as described in our Support Agreement. CMD's Support agreement is posted on CMD's website, and is available by clicking [HERE](#) and is incorporated herein by reference.
9. Maintenance. During the terms of this Agreement, CMD shall provide to Customer the same updates, patch releases and new versions of the Licensed Software that it makes generally available to its other customers. The terms of this Agreement will govern any upgrades, updates, or new versions of the Licensed Software.
10. Customer Data Rights. In the event that Customer wishes to obtain a copy of their account data:
- a. All outstanding balances need to be paid in full; and
 - b. Upon Customer request for account data, a file containing a computer-readable representation of Customer's data will be provided by CMD within thirty (30) business days. The data will include patient demographics and financial information and will be provided to Customer for a fee in a

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format that can be used by a competent third-party software company or information technology consultant.

11. Confidentiality of Patient Records. The parties agree to be bound by the terms of the **HIPAA Business Associate Agreement (“BAA”)** provided by CMD to Customer. Customer is responsible for understanding and complying with all applicable laws regarding medical records, patient access to information and patient authorization to release data. Customer agrees to defend, indemnify and hold CMD harmless against any third party claims demands damages, fines, penalties or expenses arising out of or related to any violation of any individual's privacy rights due to information submitted to CMD or uploaded to the Licensed Software by Customer or anyone acting on Customer's direction or behalf.
12. Fees and Charges. The fees and charges to be paid by Customer to CMD for use of the Licensed Software and Services are set forth on our website and in our Accounting Agreement, and are based upon Customer's type of business (medical practice, medical billing service, laboratory) and upon the Licensed Software plan or package selected by Customer, which selection shall be noted and confirmed in Customer's new client set-up and implementation paperwork/information. CMD's Accounting Agreement is posted on CMD's website, and is available by clicking [HERE](#) and is incorporated herein by reference. All prices are subject to change. Fees charged to Customer by insurance companies are Customer's sole responsibility. Fees for items that are mailed via the USPS, such as paper insurance claims or paper patient statements, can be increased at any time to reflect a change in the USPS postage and/or processing costs.
13. Invoicing Terms and Account Update.
 - a. Monthly Invoicing. Invoicing and payment terms are set forth in CMD's Accounting Agreement. Customers shall be billed monthly. Per the Accounting Agreement, Customer shall provide CMD with a credit card account or debit account and enable/allow CMD to charge the account monthly to cover Customer's monthly fees and charges due for the Licensed Software and Services. CMD shall submit charges against Customer's credit card or debit account within the first five (5) business days of the month for the previous month's access or transactions. Invoices are delivered by electronic mail only. If Customer believes their bill is incorrect, Customer must contact CMD within thirty (30) days of the invoice date of the invoice containing the discrepancy. If CMD approves Customer's proposed adjustment, Customer shall receive an adjustment or credit on the next month's invoice.
 - b. Account Update. Customer shall at all times keep CMD informed of any changes on Customer's Account i.e. business name change, ownership change, contact info (contact person, address, email, telephone, fax number, etc.).

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14. Payment Types and Returned Payment Fees. CMD accepts electronic payments such as Visa, MasterCard (MC), American Express (AMEX), Discover and debit cards with the MC/Visa logos. Customer is responsible for online/electronic payment and CMD relinquishes all responsibility in this option. A processing fee will apply for insufficient funds or rejected payment transaction. Customer shall at all times keep CMD informed in advance of any changes to their payment method.
15. Non-Payment and Suspension. In accordance with the Accounting Agreement, CMD reserves the right to suspend or terminate this Agreement and Customer's access to the Software Service if Customer's account becomes delinquent.
16. Term and Termination. The initial term of this Agreement shall be for one year, beginning on the date of Customer's execution and acceptance of this Agreement, (the "Effective Date") and shall renew yearly thereafter, unless terminated as set forth below:
 - a. Either CMD or Customer may terminate this Agreement for its convenience by providing the other party with a written notice stating the reason for termination, executed by an authorized owner/representative of the party requesting the termination, with the date of termination to occur no sooner than thirty (30) days from the date in which either party receives the written notice from other party. All sums due CMD under this Agreement, through and including the date in which termination occurs, shall be due and payable by Customer to CMD upon receipt of final invoice.
 - b. Upon termination of this Agreement, all rights granted to Customer hereunder shall expire, terminate, and revert to CMD.
17. Disabling Mechanism. You acknowledge and agree that the licensed software may have a mechanism whereby CMD can disable the licensed software. You agree that CMD may use any such mechanism in the event of your breach of this Agreement, or a breach of your End User License Agreement.
18. Proprietary Protection of Licensed Software.
 - a. CMD has, and shall retain throughout the term of this Agreement, sole and exclusive right, title, and interest in the Licensed Software and in any applications, modifications, improvements, or enhancements to the Licensed Software, including ownership of all trade secrets and copyrights pertaining to the Licensed Software and all works derived from the License Software, regardless of the media in which the Licensed Software is contained, recorded or fixed.
 - b. Customer shall not, at any time, disclose or disseminate the Licensed Software or any copyrighted information or trade secrets embodied in the Licensed Software to any person, firm, organization, or employee. Under no circumstances shall Customer copy, "unlock", de-compile,

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reverse assemble, or reverse engineer the binary or object code of the Licensed Software, as these terms are generally used in the trade. Under no circumstances may Customer disclose or disseminate any trade secrets contained in the Licensed Software to any competitor of CMD or any other third party. Customer will devote its best efforts to ensure that all Customer's personnel and other persons afforded access by Customer to the Licensed Software comply with the terms of this Agreement, comply with CMD's End User License Agreement and protect CMD's copyrights and trade secrets against improper use, dissemination, or disclosure.

- c. Customer acknowledges that, in the event of Customer's breach of any of the foregoing provisions in paragraph 4 and this paragraph 17, CMD may not have any adequate remedy in money damages. CMD shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request, without the requirement of a bond or other security. CMD's right to obtain injunctive relief shall not limit its right to seek further remedies as available at law or in equity.
- d. Customer's obligations hereunder shall remain in effect for as long as Customer continues to possess or use the Licensed Software or any trade secrets or works derived there from.

19. Warranties.

- a. Each party hereby represents and warrants to the other that:
 - i. Such party has the right, power and authority to enter into this Agreement, and to fully perform all of its obligation hereunder; and
 - ii. The making of this Agreement does not violate any agreement existing between such party and any third party.
- b. Customer Warranty. Customer represents and warrants that it:
 - i. Shall take reasonable commercial steps to have all of its users, employees, agents and independent contractors comply with this Agreement;
 - ii. Will use and permit use of the Licensed Software or the Service only in accordance with the terms and conditions of this Agreement;
 - iii. Shall authorize the access and use of the Licensed Software and the Service only to users that have agreed to be bound by the End User License Agreement then in effect; and
- c. CMD Warranty. CMD represents and warrants that it:
 - i. Shall provide the Licensed Software and the Services in a manner consistent with this Agreement and that the Licensed Software will perform substantially in accordance with CMD's online help documentation, so long as used under normal conditions and circumstances;

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- ii. Will comply with all applicable laws, regulations, and ordinances in its marketing, distribution, and use of the Licensed Software and Service.
- iii. Complies with HIPAA Rules, and applicable Florida law governing the privacy and security of certain types of information, including, but not limited to, §501.171 Fla. Stat., addressing the security of confidential personal information.
- iv. Shall take reasonable commercial steps to perform its ongoing support services.

20. Limitations of Liability and Disclaimer of Warranties.

- a. CMD shall not be liable to Customer for errors resulting from defects in, or malfunctions of, the mechanical or electronic equipment used by Customer in conjunction with the Licensed Software or Services, for Customer or its agents' failure to follow CMD's instructions, use of non-licensed products with the Licensed Software or Services, or for factors beyond CMD's ability to control.
- b. To the maximum extent permitted by applicable law, CMD shall not be liable for any incidental, special, indirect or consequential damages arising from a breach of this Agreement, from the use of the Licensed Software or Services, or from any act of negligence, including CMD's own negligence, unless such damages result from gross negligence or willful misconduct on the part of the CMD's officers or employees arising from actions or failures to act in matters beyond the scope of this Agreement, in which case CMD's liability will be limited to actual damages directly resulting therefrom, as limited by paragraph 20(d) below. In the event Customer recovers insurance proceeds pursuant to Customer's insurance, such proceeds shall constitute an offset against any damages claimed by Customer. It is understood that all costs and expenses of such shall be paid by Customer
- c. UNLESS OTHERWISE EXPRESSLY STATED HEREIN, IN NO EVENT WILL CMD BE RESPONSIBLE FOR SPECIAL, INDIRECT, RELIANCE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY ACT OR OMISSION BY CMD IN CONNECTION WITH THIS AGREEMENT, EVEN IF CMD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH DAMAGES ARISE IN AN ACTION AT LAW OR IN EQUITY, FOR BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, BREACH OF UCC PROVISIONS, NEGLIGENCE, OR TORT. FURTHERMORE, CMD SHALL NOT BE LIABLE FOR CUSTOMER'S LOST PROFITS, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF SAVINGS, LOSS OF REVENUE, OR FOR ANY EXEMPLARY DAMAGES.
- d. THE PROVISIONS OF THIS PARAGRAPH 20 ARE IN LIEU OF AND EXCLUDE, AND CMD EXPRESSLY HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. IN THE EVENT THE ABOVE EXCLUSION OF IMPLIED WARRANTIES IS FOUND NOT TO APPLY TO CUSTOMER, THEN IN ANY EVENT AND UNDER ANY THEORY OR FORM OF ACTION, CMD'S LIABILITY FOR DAMAGES SHALL NOT EXCEED THE AMOUNT OF THE

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FEES PAID BY CUSTOMER TO CMD UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE ALLEGED BREACH OR DEFAULT.

21. Export Restrictions. This Agreement is made subject to any restrictions concerning the export of the Licensed Software or any part thereof from the United States of America. Customer shall not export, directly or indirectly, the Licensed Software, nor any other technical data received from CMD, in violation of such laws. Customer shall not export, transmit, or broadcast, directly or indirectly, the Licensed Software or any technical information acquired from CMD under this Agreement to any country for which the United States government or any agency thereof at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from CMD and the United States Department of Commerce and other authorized agencies of the United States government when required by an applicable statute or regulation. Customer represents and warrants that it shall not provide the Licensed Software, either directly or indirectly, to any of the following countries or to any national or resident thereof, unless Customer has obtained prior written authorization of CMD and the United States Department of Commerce: Cuba, Libya, Iran, Iraq, Sudan, Syria, North Korea and any other country embargoed by executive order. CMD shall have the right to modify this list to conform to changes in the United States Export Control Regulations.
22. Dispute Resolution. Customer and CMD agree that in the event of any material dispute or disagreement between them regarding this Agreement or either party's rights or obligations hereunder, other than and excepting claims or actions for collections of unpaid fees or charges or , the parties shall, as soon as practicable, and in any case before filing any legal action in a court of law, arrange a meeting or conference call to address the dispute or disagreement and shall make a good faith effort to negotiate a mutually acceptable resolution. Nothing in this paragraph 22 shall prevent CMD from exercising its rights as stated herein to limit or terminate Customer's access to the Licensed Software or receipt of the Services.
23. General
- a. Customer is solely responsible for reporting and paying any taxes (including sales or use taxes, and property and intangible taxes) resulting from Customer's acceptance of this Agreement and Customer's possession and use of the Licensed Software and receipt of the Services provided or furnished under this Agreement. CMD reserves the right to bill Customer for any such taxes billed to CMD as they fall due for remittance to the appropriate authority. Customer agrees to hold CMD harmless from all liability arising from Customer's failure to report or pay such taxes.
 - b. The parties hereby agree and consent that:
 - i. The sole and exclusive venue for any legal action authorized or brought hereunder, or brought by either party against the other, whether based in contract, tort, breach of

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warranty or promise, or other theory under law or equity, shall be in a court of competent jurisdiction in Orange County, Florida, and

- ii. Personal jurisdiction of the parties shall be vested in the Federal District Court, Middle District of Florida, or the State Courts of Florida situated in Orlando, Orange County, Florida.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without recognition of conflict of law decisions.
- d. Any notice required or permitted under this Agreement, if provided by CMD, shall be provided by email or other electronic notice to Customer's authorized representative or administrator, as both are identified by Customer in writing during set-up and implementation of the License Software. Any notice required or permitted under this Agreement, if provided by Customer, shall be provided by email to Accounting@CollaborateMD.com.
- e. In the event that any terms of this Agreement are or become, or are declared to be invalid or void, such terms shall be deemed severed from this Agreement, and all the remaining terms of this Agreement shall remain in full force and effect.
- f. This Agreement, the BAA, the End User License Agreement (“EULA”), the Accounting Agreement, Support Agreement, Training Agreement and the web pages referenced herein, all of which are incorporated herein and made a part of hereof, are the complete and exclusive statement of CMD's obligations and responsibilities to Customer and supersedes any other proposal, demonstration, representation, or other communication by or behalf of CMD relating to the subject matter hereof; provided, however, that in the event of any conflict between the terms and conditions of this Agreement and the EULA or any web page, this Agreement shall govern and control. Customer's use of the Licensed Software and Services shall not commence until Customer has executed this Agreement, and an authorized representative of CMD has received and approved this Agreement.
- g. In the event either party bring suit to enforce the provisions of this Agreement, the Court shall have the right to award reasonable attorneys' fees to the prevailing party.

This Agreement is the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter.

The Parties have caused this Agreement to be executed in their names by their duly authorized representatives per their acknowledgement of this Agreement.

COLLABORATEMD, INC ("CMD") CUSTOMER SOFTWARE AGREEMENT

VENDOR:

CollaborateMD, Inc.
111 N Magnolia Ave Ste 1100
Orlando, FL 32801

(Legal Business Name & Address)

Darrell R. Turner

(Authorized Representative Signature)

Darrell R. Turner

(Authorized Representative Name)

President & COO

(Authorized Representative Title)

(Date)

CUSTOMER:

(Legal Business Name & Address)

(Authorized Representative Signature)

(Authorized Representative Name)

(Authorized Representative Title)

(Date)