



CUSTOMER AGREEMENT GENERAL TERMS AND CONDITIONS

1. **Definitions.** For all purposes of this Agreement, the following terms shall have the following meanings:
 - 1.1 "Affiliate" shall mean any entity owned or controlled by, under common ownership or control with, or which owns or controls either party to this Agreement or any of its subsidiaries.
 - 1.2 Company shall mean Envoy LLC.
 - 1.3 "Effective Date" shall mean the date this document is accepted by Company and Implementation or use of the Services begins.
 - 1.4 "IP" shall mean the Products, Services and Materials provided hereunder.
 - 1.5 "Materials" shall mean all specifications and written materials (including but not limited to any and all training materials, designs and design documents, information manuals, and all other documentation) provided to Customer by Company with respect to the Products and Services provided hereunder.
 - 1.6 "Payers" shall mean those entities that receive Transactions submitted by Customer through the Services, as identified from time to time by Company.
 - 1.7 "Products" shall mean all equipment, hardware, firmware, Software and other applications, and all modifications, updates, enhancements, or replacements for any of the foregoing, furnished to Customer by Company hereunder. Each Product selected by Customer and the pricing related thereto shall be set forth on the Registration Form.
 - 1.8 "Services" shall mean the electronic data interchange services and other services performed by Company or one of its Affiliates (including, but not limited to, CPS LLC and MedE America LLC) from time to time for Customer as selected on the applicable Registration Form.
 - 1.9 "Software" shall mean those computer software programs (whether in source or object code form) to be provided by Company hereunder.
 - 1.10 "Transactions" shall mean batch and real-time healthcare transactions submitted by Customer to Company for transmission to a Payer, whether or not a Payer accepts or favorably adjudicates such transactions.
2. **Right to Use the Products and the Services.** Subject to the terms and conditions of this Agreement, Company grants to Customer a non-exclusive and nontransferable license for the term of this Agreement to use the specified Products and Services, including the machine readable object code version of the Software, if applicable, only at the designated Facilities for the internal use of Customer for the processing of patient information and development of data with respect to Payers. This license grant to Customer also includes the right to use the Materials at the Facilities solely to assist Customer in its use of the Products and Services. No rights are granted to the IP except as explicitly set forth in this Agreement. Customer may make a reasonable number of copies of the Software, if applicable, only for backup and archival purposes. Customer shall not remove any of Company's copyright, trademark, or other confidentiality notices from the Software or Materials. Notwithstanding the above, if any Product selected by Customer involves the purchase of equipment, the terms of such purchase shall be set forth in the applicable Registration Form.
3. **Maintenance and Support.** Company shall provide reasonable ongoing technical support through telephone consultations with respect to the Products and the Services, and shall provide a local or toll-free telephone number for access to Company's technical support facility for this purpose. Company shall be the sole source of maintenance and/or support services for the Products and the Services. Customer shall be responsible for the day-to-day operation of the Software, if applicable, and acquiring, operating, and maintaining in good working order the computer hardware, software, and peripheral equipment used in conjunction with and/or necessary for the operation of the Software and/or the Services. Company shall have no responsibility for any costs incurred in connection with modifications or enhancements to Customer's system necessary for implementing Customer's interface with the Products or the Services or in connection with Customer's use of the Services, unless otherwise expressly set forth in a Schedule hereto. Company may from time to time in its sole discretion, without liability to Customer, revise, modify, update or replace any Products or Services in whole or in part, provided the Products and Services are not adversely affected in any material manner and Company notifies Customer of any such event with reasonable promptness after determining that such event will occur. Company shall furnish Customer with appropriate Materials in connection therewith in a manner reasonably calculated to allow implementation and testing by Customer before the effective date of such event.
4. **Fees.**
 - 4.1 Customer agrees to pay Company for the Products and Services and any other monies due Company pursuant to this Agreement in accordance with the pricing for each Product and Service set forth on any applicable Registration Form hereto. Onetime fees are due and payable upon execution of this Agreement. Payment is due within thirty (30) days after receipt of invoice. Company reserves the right to suspend use of the Services if undisputed past due invoices are not remedied within ten (10) days following oral or written notice by Company, and all costs of collection, including reasonable attorneys' fees, shall be paid by Customer. Except as provided otherwise on any fee schedule, the fees, charges and financial terms of this Agreement shall be unchanged for the first year of this Agreement, and are subject to increase or modification by Company thereafter no more than once each calendar year during the term of this Agreement upon no less than thirty (30) days prior notice; provided, however, that any such price increase shall not exceed the percentage increase during the previous calendar year in the Consumer Price Index for Urban Consumers, U.S. City Average, For All Items (1982-1984 = 100), as published by the Bureau of Labor Statistics of The United States Department of Labor.
 - 4.2 Notwithstanding the foregoing, Company shall be entitled at any time without prior notice to pass through any access fees and/or increase in communications tariffs related to the Services, including, without limitation, government-imposed access fees, fees resulting from changes in regulation or statute, any third party-imposed access fees, or any other fees assessed against Company and outside of Company's reasonable control. Company shall make available to Customer upon request documentation relating to such pass-through fees in connection with the Services.
 - 4.3 Customer shall be responsible for any taxes or charges however called, including but not limited to any registration fees, assessments, sales, use, personal property, ad valorem, stamp, documentary, excise, telecommunication and other taxes (excluding any taxes imposed on Company's income)
5. **Customer Obligations.**
 - 5.1 Customer agrees to transmit Transactions through the Services, if applicable, only in accordance with the requirements, procedures, data element standards, formats, codes, protocols and edits set forth in the then applicable companion guides and Materials.
 - 5.2 Customer shall promptly report to Company any performance problems related to the Products and the Services, including a description of the circumstances surrounding their occurrence.
 - 5.3 Customer shall execute any and all applicable documents and comply with any and all applicable procedures, rules and regulations which Company, the applicable Payer, or applicable law may require for transmission by Company of Transactions to such Payer's system, including without limitation, rules governing record retention, nondiscrimination, and error resolution as promulgated by the Services, American Express, MasterCard, VISA, the settlement bank, and insurance carriers, each as amended from time to time. Customer also shall adhere to such rules and regulations as are required by governmental agencies having jurisdiction, including the Department of Health and Human Services ("HHS"). Customer shall provide all supporting documents requested by Company necessary to comply with said rules and regulations. In furtherance thereof, if submitting eligibility Transactions to State Medicaid programs, Customer hereby agrees to the following: (a) access to eligibility information shall be restricted to the sole purpose of verification of Medicaid eligibility where Medicaid payment for medical services has been requested by authorized parties or where otherwise permitted by federal or state statute or regulation; (b) verification of eligibility under the system is not a guarantee of payment, and the records as to the recipient's eligibility status shall be the final authority; (c) Customer indemnifies and holds harmless each State, its agents and employees, from any and all claims by such Customer or any recipient who is aggrieved by the actions of Customer hereunder; (d) Customer is an approved Medicaid provider in each State to which it submits eligibility Transactions, and has supplied its correct Provider Identification Number for each such State on the signatory page hereto; and (e) Customer agrees to abide by the Federal and State regulations regarding confidentiality of information.
 - 5.4 Customer hereby appoints Company as its attorney-in-fact for the limited purpose of using the information Customer provides to submit electronic Transactions and/or sign hard copy (paper) Transactions on Customer's behalf to third-party Payers or processors, including but not limited to commercial insurers, Medicare, Medicaid, and government agencies, and, where appropriate, agencies or carriers covering work-related accident or illness benefits, where Customer's signature is required for Transaction processing. Customer acknowledges that Company is not responsible for the content or adjudication of any insurance claim, and Customer retains all liability on such claims and agrees to indemnify and hold Company harmless on account of all such claims, including the reconciliation or adjustment of any claim.
 - 5.5 Customer shall only submit Transactions to the Services on behalf of dentists, providers or suppliers that have executed appropriate written authorizations for such submission, and a true copy of such authorization shall be furnished to Company upon request. Customer shall maintain each claim, if applicable, for a period of 72 months in such manner as to assure that such claim can be associated or identified with a claim form from the applicable dentist, providers or supplier.
 - 5.6 Customer shall retain records relative to Customer's use of the Services in accordance with sound business practices, and Company may request access during normal business hours upon reasonable advance notice to such records as are reasonably necessary to examine Customer's compliance with its obligations hereunder.
6. **Proprietary Rights and Confidentiality**
 - 6.1 Customer acknowledges and agrees that the IP and all intellectual property rights (including, without limitation, trademark, copyright, patent, trade secrets and confidential information rights) derived from the Products, Materials or the performance of the Services, and all derivative works of the IP (including, without limitation, data compilations, abstracts, aggregations and statistical summaries), and all information regarding the foregoing (including but not limited to technology and know-how information) and all copies of the foregoing, regardless of by whom prepared, are the confidential property and trade secrets of Company and "Confidential Information" of Company subject to Section 6.2 of this Agreement, whether or not any portion thereof is or may be validly trademarked, copyrighted or patented. All proprietary rights in and to the foregoing shall remain vested in Company or its licensor, except for the limited license rights granted Customer pursuant to this Agreement. Customer will make no attempt to ascertain the circuit diagrams, source code, schematics, logic diagrams, components, operation of, or otherwise attempt to decompile or reverse engineer, or copy, modify, transfer or prepare any derivative works from, the IP, except as specifically authorized by Company in writing or as otherwise provided herein. Customer shall reasonably cooperate with Company in any claim or litigation against third parties that Company may determine to be appropriate to enforce its property rights respecting the IP. The breach or threatened breach by Customer of any provision of this Article 7 will subject Customer, at Company's option, to the immediate termination of all Customer's rights hereunder, and Company shall be entitled to seek an injunction restraining such breach without limiting Company's other remedies for such breach or threatened breach, including recovery of damages from Customer.
 - 6.2 Each party shall retain in confidence and not disclose to any other person, except in confidence and in accordance with this Section 6.2, any of the terms of this Agreement, and any and all confidential or proprietary information and materials of the other party. All of the foregoing are hereinafter referred to as "Confidential Information"; provided, however, Confidential Information shall not include information which (a) is or becomes generally available to the public other than as a result of a wrongful disclosure by the recipient, (b) was in the recipient's possession and not known to be the Confidential Information of the other party prior to its disclosure to the recipient by the other party, (c) was independently developed by the recipient, or (d) was disclosed by another entity without restriction and where neither party is aware of any violation of the confidential information rights of the other party. Confidential Information of the other party shall not be disclosed, in whole or in part, to any person other than in confidence to one for whom imposed by any federal, state or local government or regulatory authority with respect to the performance of the Services or delivery of the Products or the Materials by Company pursuant to this Agreement, whether such is imposed now or later by the applicable authority, even if such imposition occurs after the receipt or use by Customer of the applicable IP, the invoicing by Company for the applicable IP, or the termination of this Agreement. If Customer is tax-exempt, Customer must submit with this Agreement evidence of its tax-exempt status.



CUSTOMER AGREEMENT—GENERAL TERMS AND CONDITIONS *Continued*

- such knowledge is reasonably necessary for purposes of this Agreement, and then only to the degree such disclosure is so necessary, and only if the recipient has agreed in writing to maintain the confidentiality of such information. Each party shall hold the Confidential Information of the other in confidence and protect the same with at least the same degree of care with which it protects its own most sensitive confidential information, but in any event, no less than reasonable care.
- 6.3 If a party is required by judicial, administrative or other governmental order to disclose any Confidential Information of the other party, it shall promptly notify the other party prior to making any such legally required disclosure and provide reasonable cooperation in order to allow such party to seek a protective order or other appropriate remedy prior to complying with such order.
- 6.4 All media releases, public announcements or other public disclosures by Customer or its employees or agents relating to this Agreement or its subject matter, including without limitation, promotional or marketing materials, shall be coordinated with and approved by Company prior to release, but this restriction shall not apply to any disclosure solely for internal distribution by Customer or any disclosure required by legal, accounting or regulatory requirements.
- 6.5 The parties acknowledge and agree that the proper use and disclosure of Protected Health Information, as defined by the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder, in connection with the performance of the Services hereunder shall be governed by the Business Associate Agreement between the parties.
7. **Representations and Warranties.** Company represents and warrants that the Products and Services provided hereunder shall be provided (i) without material defect and (ii) in a professional and workmanlike manner. In the event that a documented and reproducible flaw inconsistent with this warranty is discovered, Company's sole responsibility shall be to use commercially reasonable efforts to correct such flaw in a timely manner. This warranty does not apply to (i) any media or documentation which has been subjected to damage or abuse; (ii) any claim resulting in whole or in part from changes in the operating characteristics of computer hardware or computer operating systems made after the release of the applicable Product or Service; (iii) any claim resulting from problems in the interaction of the Products and/or the Services with non- Company software or equipment; (iv) any claim resulting from a breach by Customer of any of its obligations hereunder; or (v) errors or defects caused by Customer, its agents, contractors, employees or any third party not controlled by Company.
8. **Limitations of Liability.**
- 8.1 COMPANY'S REPRESENTATIONS AND WARRANTIES ARE THOSE SET FORTH IN ARTICLE 7 OF THIS AGREEMENT. COMPANY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. COMPANY DOES NOT GUARANTEE THE PAYMENT OR THE TIMING OF PAYMENT OF ANY CLAIMS SUBMITTED THROUGH THE SERVICES. PAYMENT REMAINS THE RESPONSIBILITY OF THE PARTICULAR PAYER OF HEALTH CARE SERVICES AND/OR SUPPLIER TO WHICH THE CUSTOMER IS SUBMITTING. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT AND WITH RESPECT TO THE IP FURNISHED HEREUNDER (WHETHER UNDER CONTRACT, TORT, OR ANY OTHER THEORY OF LAW OR EQUITY) SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE PRICE PAID BY CUSTOMER TO COMPANY FOR THE PARTICULAR IP INVOLVED DURING THE ONE YEAR PRECEDING CUSTOMER'S CLAIM. THE FOREGOING LIMITATION OF LIABILITY REPRESENTS THE ALLOCATION OF RISK OF FAILURE BETWEEN THE PARTIES AS REFLECTED IN THE PRICING HEREUNDER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.
- 8.2 In the event that any information to be transmitted through the Services is not transmitted by Company or is not accurately transmitted as a result of Company's failure to perform the Services in accordance with the terms of this Agreement, and such results in damage to Customer, then Company's sole obligation and liability to Customer for such event (subject to reasonable mitigation by Customer and the limitation of liability set forth in Section 8.1), shall be limited to furnishing credits on subsequent invoices from Company to Customer in an amount equal to Customer's actual damages incurred for reconstructing or retransmitting the data, including reasonable out-of-pocket expenses that Customer can demonstrate it has sustained and that are directly attributable to such failure. Customer further agrees that Company shall not be liable in any way for any inaccuracy resulting from errors or omissions or the negligent or other wrongful acts of any employee or agent of Customer or its Affiliates. Any claim against Company by Customer must be asserted in writing within ninety (90) days after Company should have transmitted accurate information received from Customer or the transmission of inaccurate information on which the claim is based, as applicable. Customer hereby agrees to promptly supply to Company documentation reasonably requested by Company to support any claim of Customer. THIS SECTION STATES THE ENTIRE LIABILITY OF COMPANY WITH RESPECT TO CLAIMS THAT INFORMATION WAS NOT TRANSMITTED OR WAS TRANSMITTED INACCURATELY BY COMPANY.
- 8.3 Company shall have no responsibility for determining the accuracy of any claim submitted, for settling disputed claims, for settling disputed payments, for settling disagreements or disputes between a Payer and Customer, for any liability for the acts of a Payer and/or Customer that violate the Social Security Act and related regulations and/or guidelines, or for any liability foreseeable or otherwise occurring beyond Company's transmission of data.
- 8.4 Any claim or cause of action arising out of, based on, or relating to this Agreement not presented by Customer within one (1) year from the discovery of the claim or cause of action shall be deemed waived. Customer shall use commercially reasonable efforts to mitigate damages for which Company may become responsible under this Agreement.
- 8.5 Neither party shall be responsible for delays or failures in performance resulting from acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruptions of power, supply or communications or natural disasters, provided such party takes reasonable efforts to minimize the effect of such acts or events.
9. **Term and Rights Upon Termination.**
- 9.1 The term of this Agreement shall commence on the Effective Date and shall remain in effect until terminated by either party upon thirty (30) days prior written notice.
- 9.2 Either party shall have the right to terminate this Agreement upon notice that the other party has committed a material breach of its obligations under this Agreement and has failed to cure such breach within thirty (30) days of receipt of notice of such breach (or, if not reasonably curable within thirty (30) days, has failed to begin and continue to work diligently and in good faith to cure such breach). Furthermore, either party shall have the right to terminate this Agreement effective immediately upon notice in the event that the other party ceases to conduct its business in the ordinary course, becomes legally insolvent, or avails itself of or becomes subject to any proceeding under the bankruptcy laws of any applicable jurisdiction. Company shall have the additional right to terminate: (a) any Service and/or Product effective upon reasonable advance notice to Customer that Company is no longer offering or providing support for the applicable Service and/or Product; or (b) the use of the Services and/or Products for claims falling under the jurisdiction of the HHS Secretary, immediately upon notice if such termination is required by the HHS Secretary or his/her designee in the event of fraudulent or questionable billing practices of Customer.
- 9.3 Upon expiration or termination of this Agreement for any reason, (i) all license rights granted Customer hereunder shall terminate; (ii) Customer shall immediately cease using the Products and the Services; (iii) Customer shall promptly return to Company, at Customer's expense, all Products (unless purchased by Customer) and Materials, related documentation and copies of the foregoing; (iv) Customer will pay any outstanding balance for the Services and the Products, and the reduced value of all Products not returned or returned damaged beyond normal wear and tear; and (v) the provisions of Sections 4.3, 8.1, 8.4, 9.3, 10.3, 10.3, and 10.8 and Article 6 shall survive.
10. **Miscellaneous.**
- 10.1. The parties shall comply with all applicable laws, and each party shall secure any license, permit or authorization required by law in connection with those aspects of the transmission process for which it is responsible under this Agreement.
- 10.2 The parties will act as independent contractors, and this Agreement does not constitute either party as the agent or partner of the other party.
- 10.3 Except as otherwise set forth herein, notices hereunder shall be in writing signed by an authorized representative of the notifying party, and delivered personally or sent by registered or certified mail, charges prepaid, facsimile transmission or overnight courier service to the address noted on the signatory page of this Agreement (or to such other address as the recipient may have previously designated by notice), and will be deemed given when so delivered or four days after the date of mailing, whichever occurs first, or upon electronic confirmation of delivery via facsimile transmission. Notwithstanding the foregoing, notices relating to late payments may be sent by regular mail.
- 10.4 Customer shall not assign, sell or otherwise transfer this Agreement or any rights hereunder without the express prior written consent of Company, which consent shall not be unreasonably withheld. An assignment hereunder shall be deemed to include a transfer of control or a majority equity ownership of a party. Notwithstanding the foregoing, Customer may assign this Agreement to any Affiliate or a successor entity in a merger, acquisition or other consolidation without requiring the consent of Company; provided, however, that Company may terminate this Agreement in its sole discretion by written notice, if any such Affiliate or successor is a competitor of Company, and Company does not provide its prior written consent. Any purported assignment in violation of this provision shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
- 10.5 No representations have been made to induce either party to enter into this Agreement, except for the representations explicitly stated in this Agreement. This Agreement supersedes all prior or contemporaneous written or oral agreements or expressions of intent or understanding, and is the entire Agreement, between the parties and/or their Affiliates with respect to its subject matter. In the event of a conflict or inconsistency between the General Terms and Conditions and the terms and conditions of any Schedule hereto, the terms and conditions of the Schedule shall take precedence. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 10.6 This Agreement cannot be terminated (other than as set forth herein) or changed except pursuant to a writing signed by an authorized representative of each party. No waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by an authorized officer of the party charged with such waiver, and any such waiver shall be strictly limited to the terms of such writing.
- 10.7 This Agreement and any amendments hereto may be executed in one (1) or more counterparts, each of which shall be an original, but all of which together shall constitute one (1) instrument. The section headings of this Agreement are inserted for reference and convenience purposes only, and do not constitute a part, nor shall affect the meaning or interpretation of, this Agreement.
- 10.8 This Agreement is governed by the laws of the State of Tennessee both as to interpretation and enforcement, without regard to the conflicts of law principles of that State.