

# *PracticeAdmin*

## **SOFTWARE & SERVICE AGREEMENT**

WHEREAS, Client is engaged in practice as a healthcare provider, or is engaged in the business of providing products and services to healthcare providers; and

WHEREAS, PA sells software products to healthcare providers, and business that sell products and services to healthcare providers; and

WHEREAS, Client desires to purchase software products and support services from PA; and

WHEREAS, PA desires to sell software products and support services to Client;

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

1. **Term.** Unless earlier terminated as provided in Section 7, this Agreement shall remain in effect for a period of one (1) year beginning on the Effective Date. Unless one party, at least sixty (60) days before the expiration of the then-current term, provides written notice to the other party of its desire not to have the Agreement renew, then the Agreement shall automatically renew for additional periods of one (1) year each.

2. **PA's Obligations.** If PA shall provide software, support, and maintenance services to Client pursuant to this Agreement, those services shall be set forth in the Client Agreement and Quote. A summary of all services, products and equipment, and the specific compensation due to PA and associated with those services, products, and equipment, as detailed in the Client Agreement and Quote.

3. **Client's Obligations.**

A. **General.** Client's obligations in support of the software to be provided by PA shall be as set forth in the Client Agreement and Quote.

B. **Submission of Documentation.** Client shall be responsible for providing to PA all documentation as may be required for PA to perform its obligations hereunder.

C. **Consents and Other Information.** Client shall execute such forms, including software license agreements, as may be required for PA to perform its obligations hereunder.

D. **Representation of Accuracy and Veracity.** Client represents and warrants the accuracy and veracity of information provided to PA in connection with services provided, and acknowledges PA's reliance upon same in its provision of services under this Agreement.

4. **Compensation.** Client agrees to pay fees for PA's services as specified in the Client Agreement and Quote signed by Client. All "One-time Compensation" identified in the Client Agreement and Quote is due and payable on the date the Client Agreement and Quote

is signed, unless installment payments are offered by PA and Client elects to pay One-time Compensation in installments, in which case the first such installment shall be due and payable as specified in the Client Agreement and Quote securing those installments. All “Monthly Recurring Compensation” identified in the Client Agreement and Quote is due and payable in advance of the month in which the services relating to the recurring expenses are to be provided, unless specifically provided otherwise herein.

All charges, fees and other compensation, including recurring monthly compensation, may change at any time, upon 60 days notice to Client. PA will provide Client a current price list for all products and services, at any time, upon request.

## **5. Confidentiality and Medical Records.**

**A. Confidentiality.** The parties agree that the terms and conditions of this Agreement and all information made available in connection with this Agreement that is not generally available to the public, including but not limited to financial and personnel information and information made available in both written and electronic formats, shall be confidential and shall not be disclosed to third parties, without prior notice to and the written consent of the other party, except as may be required by law and except as required to further the purposes of this Agreement. In addition, PA acknowledges that to the extent it comes into the possession of confidential patient information, including without limitation, medical records, charts, physician notes, test results, and patient history, this information is protected by a physician-patient privilege and PA holds the information strictly as the agent of Client, and shall maintain such confidentiality.

**B. Maintain Records.** Client shall maintain all medical records and patient information, and the confidentiality of such records and information, in accordance with all applicable laws and within generally accepted medical standards. Client shall maintain such records for a minimum of four years after the date of service, or as required by law, whichever is longer. Each party shall provide to the other, as may be reasonably requested, access to records pertaining to services provided, billed or collected under this Agreement.

**C. Medicare Access to Books and Records.** For the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. §1395x(v)(1)(I)), each of PA and Client shall, until the expiration of 4 years after the furnishing of services pursuant to this Agreement, upon written request, make available to the Secretary of the U.S. Department of Health and Human Services or to the Comptroller General of the United States, or to their duly authorized representatives, this Agreement and such books, documents and records that are necessary to certify the nature and extent of services and costs under this Agreement. PA shall include a provision similar to this Section in any subcontract for any of its duties under this Agreement.

**D. HIPAA Compliance.** PA acknowledges that as a Business Associate of Client, PA will safeguard Protected Health Information as defined in 42 U.S.C. 1171 et seq. and applicable regulations thereunder (“HIPAA”), which may be made available to or obtained by PA, to the extent required by HIPAA and applicable state law. With respect to HIPAA compliance, PA agrees to comply with applicable requirements of law relating to Protected Health Information with respect to any task PA performs on behalf of Client, including the

following:

- a. PA will not use or further disclose Protected Health Information (“PHI”) other than as specifically set forth in this Agreement, or as required by law;
- b. PA will use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
- c. PA will report to Client any use or disclosure of PHI not provided for by this Agreement of which PA becomes aware;
- d. PA will ensure that any agents, including subcontractors, to whom PA provides PHI received from Client, agree to the same conditions and restrictions that apply to PA with respect to such information;
- e. PA will make PHI available in accordance with 45 CFR 164.524;
- f. PA will make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526;
- g. PA will make available the information required to provide an accounting of disclosures in accordance with 45 CFR 164.528;
- h. PA will make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining Client’s compliance with HIPAA; and
- i. At the termination of this Agreement, if feasible, PA will return or destroy all PHI received from Client and retain no copies of such information in any form, or if such return or destruction is not feasible, extend the protections of this Section 5(D) until such time as the PHI has been returned or destroyed. Client shall reimburse PA for its costs associated with any such record retention and maintenance beyond the term of this Agreement.

**6. Independent Contractors.** The parties are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Client and either PA or any employee or agent of PA. PA and Client shall each be responsible for the employment taxes, health insurance and other insurance benefits of its own employees throughout the duration of this Agreement.

#### **7. Termination.**

A. **General.** This Agreement shall terminate upon the earliest to occur of (the actual date of which shall be the “Termination Date”):

- a. Thirty (30) days written notice given by one party to the other party.
- b. An assignment by either party for the benefit of creditors.
- c. The filing of a petition by either party in voluntary bankruptcy.
- d. The filing of a petition in involuntary bankruptcy against either party without dismissal within thirty (30) days after filing and for any act such as death, retirement,

dissolution or suspension which causes either party to cease operating, practicing or providing its services.

e. Failure by Client to make timely payments to PA pursuant to Section 4 hereof, followed by failure of Client to cure said non-payment within three (3) business days after email notice of said non-payment is provided by PA to Client.

**B. Consequence of Termination.** If PA is providing services for which Client pays a Recurring Monthly Compensation and/or a Monthly Percentage Compensation, then PA shall continue to provide said services through the Termination Date, unless otherwise agreed upon by both parties in writing.

a. Client shall pay PA all compensation as provided for pursuant to this Agreement for all services provided before and through the Termination Period, if any.

b. It is expressly understood and agreed by Client that its rights to use of PracticeAdmin software is definitively limited to the Term of this Agreement, and that upon the Termination Date (or upon the expiration of the Termination Period, if applicable), Client's use of that software, placed in service pursuant to this Agreement, shall be likewise terminated.

c. At the later of the Termination Date or the expiration of the Termination Period and upon receipt of full payment of all compensation due from Client, PA shall make available to Client all relevant client data (patient demographics and financial information) in a standard form designated by PA. Client data does not include custom formatting, PA work product nor any of PA's custom software, including custom reports and other software developed by PA and utilized for Client's benefit during the Term.

**C. Effect of Termination on Software Support.** It is expressly understood and agreed by Client that by way of this Agreement, Client takes no title or ownership of any kind in PA Practice Manager (PA), PA Clinical Manager (PCM), Accounts Receivable Interactive (ARI), Global Paperless System (GPS), or any other PA or third party software. Further, it is expressly understood and agreed by Client that by way of this Agreement, Client takes no title or ownership of any kind in the routers, servers, switches, or any other communication or computer equipment utilized by PA to support Client's practice, whether that equipment is located at Client's office, PA's office, or at a third party location.

**8. Attorneys Fees.** In the event of any action proceeding or dispute between the parties including, but not limited to, arbitration, injunctive relief or an action for declaratory relief or for provisional remedies arising out of or in connection with this Agreement, the prevailing party shall be entitled to receive from the other party the prevailing party's attorneys fees and reasonable costs incurred in any such action, proceeding or dispute.

**9. Compliance with Statute.** The performance of services by both PA and by Client shall comply with all applicable state and federal laws.

**10. Choice of Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Georgia (without regard to its conflict of laws principles).

**11. Severability.** If any provision of this Agreement shall be found invalid, void or unenforceable, for any reason, neither this Agreement generally nor the other provisions of

this Agreement shall thereby be rendered invalid, void or unenforceable, but rather shall be construed and given effect as if such invalid, void or unenforceable provision had not been a part hereof.

12. **Additional Documents.** Upon written request the parties mutually agree to execute any additional documents reasonably contemplated under this Agreement.

13. **Binding Effect.** This Agreement shall inure to and be binding upon the successors and assigns of Client and PA.

14. **Assignment.** Neither party may assign or delegate its duties or obligations under this Agreement without the express written consent of the other party.

15. **Modification.** No modification or amendment of this Agreement shall be effective unless in writing and signed by the party or parties against whom such modification or amendment is to be enforced. However, Client may request additional purchases of software and services by unsigned email issued by an apparently authorized representative of Client. Upon receiving such a request from Client, a duly authorized representative of PA will execute a new Client Agreement and Quote which will be binding once signed by Client.

16. **Notice.** All notices herein required shall be primarily via email, or secondarily shall be written and served on the parties at the addresses following their signatures. The sending of a notice via email, shall be deemed to be sufficient service of notice and such notice shall be deemed given as of the date and time the email was sent. The mailing of a notice by certified mail, return receipt requested, shall be deemed to be sufficient service of notice and such notice shall be deemed given as of the date it is postmarked.

17. **Time is of the Essence.** Time is of the essence under this contract.

18. **Counterparts.** This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original and all of which taken together shall constitute a single instrument.

19. **Arbitration.** Any dispute or controversy arising from or relating to this Agreement shall be decided by arbitration in the County of Gwinnett, Georgia by the American Arbitration Association, by a panel of three arbitrators mutually acceptable to PA and Client, and in accordance with the procedural rules and regulations of that association. At the request of either PA or Client, arbitration proceedings will be conducted in secrecy; in such case, all documents, testimony, and records shall be received, heard and maintained by the arbitrators in secrecy, available for inspection only by PA, Client and their respective attorneys and experts who shall agree, in advance and in writing, to receive all such information confidentially and to maintain such information in secrecy until such information shall become generally known or until such time as such information becomes known by reason of judicial appeal from or enforcement of the decision of the arbitration. The decision of the arbitrators shall be binding on both PA and Client.

20. **Insurance.** At all times during the Term, Client shall maintain malpractice insurance in an amount deemed by Client reasonably necessary relative to the nature and scope of Client's business. At all times during this Agreement, PA shall maintain general liability

insurance in an amount deemed by PA reasonably necessary relative to the nature and scope of PA's business.

21. **Confidentiality of Agreement.** Client agrees not to transmit, convey, disclose, or otherwise make known the contents, terms or conditions that this Agreement, in whole or in part, to any third party, directly or indirectly, except as may be necessary to comply with a governmental, judicial or regulatory request, or with respect to third parties acting as agents or advisors to Client, such as Client's attorneys or accountants.

22. **No Guaranty or Warranty of Payment or Collection.** If services are being provided to Client to support its claims and billing activities, nothing herein shall be construed as a guaranty or warranty by PA that any or all fees billed by Client (including, without limitation, co-payments, deductibles and coinsurance) pursuant thereto shall be collected or collectible, in whole or in part. Client acknowledges that PA is not responsible for payment of billing claims submitted by Client under any circumstances.

23. **Representations, Warranties and Covenants of Client.** Client represents and warrants that neither Client nor its agents (i) has been convicted of a federal health care crime, (ii) has been excluded from participation in any federal health care programs; or (iii) is currently under investigation or involved in any legal proceeding which may lead to such a conviction or exclusion. Client shall notify PA immediately if any of the foregoing occurs whereupon PA shall have the right to immediately terminate this Agreement.

24. **Representations, Warranties and Covenants of PA.** PA represents and warrants that neither PA nor its agents (i) has been convicted of a federal health care crime, (ii) has been excluded from participation in any federal health care programs; or (iii) is currently under investigation or involved in any legal proceeding which may lead to such a conviction or exclusion. PA shall notify Client immediately if any of the foregoing occurs whereupon Client shall have the right to immediately terminate this Agreement.

25. **Limitation of Liability.** In no event shall either PA or Client be liable to the other for consequential, exemplary, indirect, special or incidental damages, including, without limitation, lost profits, revenue or data, resulting from the performance of services provided for in this Agreement, whether such damages may be caused by delays, errors, lost data, failure to perform, interruptions or disruptions in services caused by or resulting from any act or omission or condition caused by either party, other than acts of gross negligence or intentional acts which are the direct cause of such damages.

26. **Employee Non-Solicitation.** During the term of this Agreement and for a period of six (6) months following the termination or expiration of this Agreement, Client agrees that it will not solicit or otherwise encourage any person who is a contractor or employee of PA to leave the employ of PA.

27. **Installment Payments.** If payment of One-time Costs is offered to be made by Client in installment payments over time, and Client has so elected to pay startup costs in that manner, then Client agrees to promptly pay said installments when due, as specified and evidenced by the Client Agreement and Quote securing those installments. If Client fails to make timely payments of said installments pursuant to the terms of the Client Agreement and

Quote, or otherwise breaches the terms of that Client Agreement and Quote, PA may, at its option, thereafter terminate the Agreement pursuant to paragraph 7(A)e. If this Agreement is for any reason and by either party terminated before all installment payments have been paid, then as of the date notice of termination is given, all installment payments shall be accelerated and shall be immediately due and payable.

28. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties on the matters contained herein. Any agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may not be modified, changed or waived orally, but only in writing signed by the party against whom such change is sought. The failure of a party to exercise any power or right hereunder or to insist upon strict compliance with the obligations hereunder shall not constitute a waiver of a party's right to demand exact compliance with the terms hereof.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.